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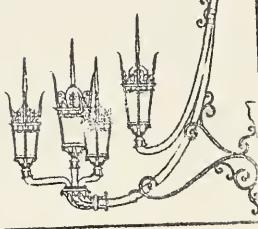
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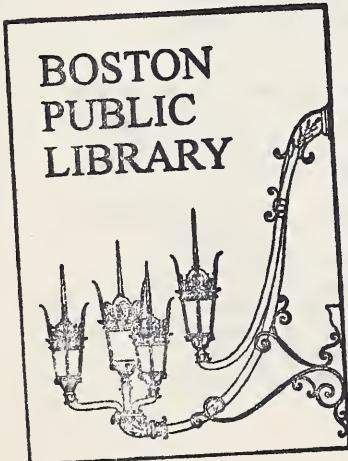
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COMMONWEALTH OF MASSACHUSETTS
BOSTON REDEVELOPMENT AUTHORITY

IN RE: CHAPTER 121A)
APPLICATION OF POST OFFICE)
SQUARE REDEVELOPMENT CORP.)
)

MEMORANDUM AND SUBMISSION OF SUBSTANTIVE
EVIDENCE BY FIRST FRANKLIN PARKING CORP.



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COMMONWEALTH OF MASSACHUSETTS
BOSTON REDEVELOPMENT AUTHORITY

IN RE: CHAPTER 121A)
APPLICATION OF POST OFFICE)
SQUARE REDEVELOPMENT CORP.)

)

INTRODUCTION AND SUMMARY OF
ENCLOSED MEMORANDUM AND EVIDENCE
INTRODUCTION

Three corporations: (i) Progress for Parking, Inc., (ii) Parking Improvements, Inc., and (iii) Better Traffic, Inc. (hereinafter the "Applicants"), on or about November 14, 1983, with the intent to associate themselves for the purpose of undertaking and carrying out a project under General Laws Chapter 121A, filed an Application for Approval to Carry out a Project in Boston, Massachusetts under M.G.L. Ch. 121A, as amended and St. 1960, Chapter 652 and for consent to the formation of Post Office Square Redevelopment Corp. (hereinafter the "Application"). In December of 1983 and January of 1984, purported public hearings were held before the Board of Directors (hereinafter the "Board") of the Boston Redevelopment Authority (hereinafter the "BRA"), and the Application was approved by the BRA in its Report and Decision dated May 10, 1984 (hereinafter "Report and Decision").

On or about December 23, 1985, the Applicants purported to file a First Amendment to Application for Approval to Carry Out a Project in Boston (hereinafter the "Amendment") and a purported public hearing was held on January 23, 1986.

On or about January 17, 1986, a document purporting to be the approval of the Mayor for the City of Boston was filed with the City Clerk.

The First Franklin Parking Corp. (hereinafter "First Franklin"), is a person aggrieved by the above-described Application and, if allowed, Amendment. It, therefore, participated in the hearing on the original Application and intended to participate in the hearing on the Amendment. Prior to the hearing on the Amendment, First Franklin filed three motions entitled as follows: (1) Motion to Dismiss, (2) Motion to Stay Hearing and (3) Motion to Amend Report and Decision of Boston Redevelopment Authority dated May 10, 1984.

At the commencement of the public hearing on the Amendment on January 23, 1986, the Board ruled it would entertain arguments on First Franklin's Motion to Dismiss and Motion to Stay Hearing only in written form and separate Memoranda in support of each of the aforesaid motions are filed simultaneously herewith (T. V.II at 8-9). The Board further ruled that the Applicants would be permitted to speak in support of their Amendment only and that the opposition would be permitted to speak against the provisions of the Amendment

only (T. V.III at 3). Prior to the adjournment of the hearing on January 23, 1986, the Board ruled that First Franklin may submit such further legal memoranda and evidence in written form that it may choose and that the same would be considered part of the public hearing record if submitted in written form on or before February 4, 1986. (T. V.III at 55). The Board further ruled that it would accept as part of the record any further additional legal memoranda or rebuttal that the Applicants may choose to submit if received by the Board on or before February 11, 1986. (T. V.III at 57).

SUMMARY

Since this document examines several legal issues and supplies additional factual evidence for the Board's consideration, the following section will summarize the contents of the various sections of this document.

PART I. SECTION CONCERNING MOTION TO DISMISS

This section sets forth the legal argument that the Application for Amendment and any Amendment allowed is, or would be, improper since the Amendment was not signed by the proper parties, was not under oath, and was not brought within the time period prescribed by the applicable regulations.

PART II SECTION CONCERNING MOTION TO STAY

This section sets forth the legal argument that the hearings should be stayed because the Applicants have not complied with the Massachusetts Environmental Policy Act (MEPA) Mass G.L. c. 30 sec 61 - 62H because they filed an Environmental Notification Form which contained materially false information. The form falsely responded to the question of whether this project is one which categorically requires an Environmental Impact Report. Further, since Secretary Hoyte's letter was predicated on information contained in the false Notification Form, further action by his office will be necessary. Since an Environmental Impact Report is required, the board should not act until one has been filed. The project has significant impact upon, at least, the water table, traffic and the air quality aspects of the environment.

Part III SECTION ON CHARACTERIZATION OF THE AMENDMENT AS A FUNDAMENTAL CHANGE

This section sets forth the legal argument and factual analysis supporting the position that the Amendment filed by the Applicants, (represented to be innocuous), in fact represents a fundamental change in the project and completely revamps the proposal. Pursuant to Mass. G.L. 121A and St. 1960 c.652 §13 and also as adopted and additionally required by Boston Redevelopment Authority Rules and Regulations Governing 121A Project in the City of Boston adopted June 22, 1978 as

most recently amended January 16, 1985 (hereinafter "Regulations") Rule 6, the Authority is required to proceed as if the Amendment were a new Application.

PART IV. SECTION IN SUPPORT OF FIRST FRANKLIN'S MOTION TO AMEND REPORT AND EVIDENCE SHOWING WHY THE REPORT AND DECISION IS IN NEED OF AMENDMENT

This section sets forth the legal argument that the BRA must allow updated evidence concerning the condition of the site under recent Supreme Judicial Court case law and fundamental principles of due process. This section further provides the factual evidence that every previous finding of deterioration or need of repair has been corrected, that there has been the expenditure of more than \$500,000.00 since the January, 1984 hearing, and that any question of the structural integrity of the garage has been scientifically and conclusively answered by an engineer supervised load test proving the garage's structural capacity to be well in excess of present day code requirements.

Part V. LEGAL AND POLICY ARGUMENTS SHOWING WHY THE AMENDMENT PROPOSED BY THE APPLICANTS IS NOT IN ACCORDANCE WITH THE REQUIREMENTS OF THE STATUTE

This section embellishes a portion of the oral argument of

counsel for First Franklin made at the purported public hearing on the Amendment and points out that the BRA is asked to give approval to an undefined project and to illegally delegate its oversight, fact finding and approval responsibilities in violation of the statutory scheme.

Part VI. THE REQUIREMENT CONTAINED IN THE REPORT DISPENSING WITH THE APPROVAL OF THE DEPARTMENT OF REVENUE SHOULD NOT BE DELETED

This section analyzes the provision of the proposal which permits the Applicants to pay excise taxes under c. 121A sec 10 based on the income of the corporation. Under the Applicants' plan, corporation income derives from a net lease while the full gross income of the project, earned by an operating partnership, goes untaxed. First Franklin argues that the provision of the May 10 Report and Decision which requires that the tax provisions of the agreement be approved by the Department of Revenue should remain in effect. Finally, this section argues that the Applicants have failed to meet their statutory obligation to reveal the amount of their 6A payments.

PART VII. MISCELLANEOUS LEGAL ARGUMENTS

This section contains First Franklin's other legal bases for challenging the Application and the Amendment. It

outlines the numerous fundamental violations of the statutory scheme, other statutory provisions and the federal and state constitutions which exist or took place in the Application, the proceedings and the Approvals.

I. SECTION CONCERNING MOTION TO DISMISS INTRODUCTION

Prior to the commencement of the public hearing on the First Amendment to the Application First Franklin, a party to the proceeding, filed a Motion to Dismiss, a copy of which for the convenience of the Board is attached to this section marked "I-A".

ARGUMENT

I. Motion to Dismiss is Appropriate Pleading.

The Boston Redevelopment Authority does not have any procedural regulations for the conduct of its public hearings or for the participation by parties in its public hearings. Nor are there specific procedures in the regulations for raising legal issues at the administrative level for preservation upon judicial review by certiorari. In these circumstances, it is respectfully submitted it is appropriate to draw by analogy upon the procedural rules governing adversary hearings in the courts of the Commonwealth and before administrative agencies. A Motion to Dismiss is therefore the appropriate pleading or procedural tool to raise a threshold issue attacking the sufficiency of the Application For Amendment itself and its technical compliance with the Rules and Regulations of the BRA. See e.g. Mass R. Civ. P. 12.

III. The Application is in Improper Form.

The Board's attention is directed to the signature page of the First Amendment to the Application itself and in particular reference the following:

(i) The three purported corporate persons choosing to associate themselves have not signed the application but have purported to appear by their attorney James B. White, Esquire, Palmer & Dodge.

(ii) A Notary Public has acknowledged that Mr. White's signature was his free act and deed as attorney for such corporations, but has not acknowledged his oath that the statements contained in the Application are true. The Board's attention is invited to compare the original Application filed on November 9, 1983 and particularly that Norman B. Leventhal, as President of each corporate person, signed the Application under oath verifying the truth of the statements before a Notary Public.

Rule 1C states as follows:

(C) "Signed Under Oath

Every application submitted to the Authority under said Chapter as amended and every amendment of any such application, shall be in writing and signed under oath by all of the persons intending to associate themselves as

aforesaid, or by a duly authorized officer of the insurance company or of each savings bank, or by all such individuals whether or not so associated, as the case may be, and, if signed by such an officer, shall have attached to it evidence of such corporate action authorizing its submission. Minor amendments to such application, when submitted to the Authority during the period between initial filing and final approval of said application, may be signed under oath by the duly authorized attorney for the applicant(s)." (Emphasis supplied).

It is undisputed that the Amendment was not signed under oath by all persons intending to associate themselves and the Motion to Dismiss, Paragraph 1(a), addresses this point.

The Motion to Dismiss addresses the possibility that the Applicants may attempt to argue the Amendment constitutes a "Minor Amendment" and that it should be governed by the last sentence in the above-quoted Regulation. It is respectfully submitted that under no circumstances and even with the most liberal construction of the phrase "minor amendment" can the Applicants' Amendment ever be considered a "minor amendment". This argument is developed more fully in Section III requesting a finding by the BRA that the Amendment be treated as a "fundamental change". Nevertheless, should this argument be advanced, it fails for two procedural reasons as set forth in the Motion and embellished in this Memorandum and numbered the same, as follows:

b. (i). The Regulation specifically requires even Minor Amendments signed by attorneys to be signed under oath. The mere acknowledgment that a signature is one's free act and deed is not a verification of the truth of the statements

contained in the document and none of the pains and penalties of perjury are associated with a document that is not properly sworn to under oath before a Notary Public. This is the case with the Applicants' Amendment.

b. (ii). Exhibit A attached to the Amendment itself recites that the Report and Decision was approved by the Mayor on October 4, 1984 and therefore the Amended Application filed December 23, 1985 is conclusively outside the prescribed time limits when the BRA may entertain Minor Amendments, all as set forth in the last sentence of the Regulation, Rule 1C, quoted above.

III. Non-Compliance with Rule 6 of the Regulations

Amendments which come after the approval by the Mayor are governed by the BRA Regulation Rule 6 which states as follows:

"Amendments

After the Authority's adoption of a Report and Decision on an application and approval of the same by the Mayor, applicant(s) may find it necessary to amend their application as a result of developments or factors not present at the time of the original application, such as, but not limited to, an increase in the proposed cost of the project, adjustment in the boundary of the project, or a need for additional deviations from existing laws, codes, ordinances and regulations. In such cases, applicant(s) may file amendment(s) to the Application, and the Authority shall approve or disapprove the same and amend the Report and Decision accordingly. If the Authority finds that the Amendment involves a fundamental change to the project, the Authority will proceed as if it were a new application. (emphasis added)"

The applicants have failed to adduce any evidence or indeed even state that their Amendment is a result of developments or factors not present at the time of the original Application. Instead, at the public hearing, the Applicants' attorney, Mr. White, stated the Amendment was a result of changes in the proposal which the Mayor and the City demanded. (T.V.III. at 28). If the Mayor did not approve the original Application and the BRA's Report and Decision, as appears to be the case, the recourse of the Applicant is to resubmit an Application in compliance with the governing statutes and Regulations and not to attempt to make fundamental changes to appease the Mayor and the City under the guise of a Minor Amendment.

These Regulations have been created to govern the procedure concerning Applications for 121A projects. No less than the Applicants, the BRA is bound by its regulations. Royce v. Commissioner of Corrections, 390 Mass. 425 (1983), Silva v. Romney, 342 F. Supp. 783 (D.C. Mass. 1972).

CONCLUSION

For the foregoing reasons, the purported First Amendment proceeds upon an improper Application technically and procedurally in direct conflict with the Regulations governing Amendments. It should be dismissed at the outset.

EXHIBIT I-A

COMMONWEALTH OF MASSACHUSETTS
BOSTON REDEVELOPMENT AUTHORITY

IN RE: CHAPTER 121A)
APPLICATION OF POST OFFICE)
SQUARE REDEVELOPMENT CORP.)
)

MOTION TO DISMISS

Now comes First Franklin Parking Corp., a party to this proceeding, and moves that the "First Amendment to Application for Approval to Carry Out a Project in Boston, Massachusetts Under Mass. G.L. c. 121A, as Amended and Stat. 1960, c.652, and for Consent to the Formation of Post Office Square Redevelopment Corporation" (hereinafter "Amendment") be dismissed. First Franklin Parking Corp. states as reasons herefor:

1. The Amendment is not in the form required by Rule 1(c) of the Boston Redevelopment Authority Rules and Regulations Governing Chapter 121A Projects in the City of Boston (hereinafter "Regulations") in that:

a. The amendment is not "...signed under oath by all of the persons intending to associate themselves..." for the purposes of carrying out the project.

b. If this be considered a minor amendment;
(i) the amendment is not signed under oath by the duly authorized attorney for the applicants;

(ii) the amendment is not brought during the period between initial filing and final approval of the application.

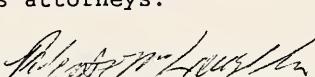
2. The requested amendments are not a result of developments or factors not present at the time of the original application as required by Rule 6 of the regulations. Therefore the subject of the submission is not properly an amendment but a fundamental change in the application.

WHEREFORE, First Franklin Parking Corp. moves that the application for amendment be dismissed.

Respectfully submitted,

FIRST FRANKLIN PARKING CORP.

By its attorneys:


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III. SECTION IN SUPPORT OF MOTION TO STAY HEARING
INTRODUCTION

Prior to the commencement of the public hearing on the above-entitled First Amendment to the Application First Franklin, a party to the proceeding, filed a Motion to Stay Hearing, a copy of which for the convenience of the Board is attached to this Section marked Exhibit "II-A".

ARGUMENT

The Boston Redevelopment Authority must consider the consequences to the environment of any project which comes before it for which approval is sought and which requires a permit or seeks financial assistance from this Board. G.L. c.30 §61. In the instant case, the proposed project meets both criteria. The Massachusetts Environmental Policy Act ("MEPA"), G.L. c.30 §§61-62H, assures that relevant environmental information will be available to an agency through provisions requiring the production of Environmental Impact Reports. This Board has recognized its obligation to consider environmental consequences. (T.V.I at 3)

First Franklin recognizes that included as an exhibit in the original Application is a letter from Secretary James S. Hoyte dated September 6, 1983, determining that the project does not require the preparation of an Environmental Impact Report. It should be noted that Secretary Hoyte's letter is captioned "Certificate of the Secretary of Environmental Affairs on the Environmental Notification Form. (Emphasis

supplied)." A copy of Secretary Hoyte's letter is attached to this Section for the convenience of the Board marked Exhibit "III-B".

The Applicants submitted an Environmental Notification Form on July 29, 1983, a copy of which appears as Appendix 11 to their original Application and, for the convenience of the Board, a copy of a portion of which is attached to this Section marked Exhibit "II-C". The Environmental Notification Form included materially false information and, specifically falsely responded negatively to the question whether this project is one which is "categorically included" and therefore automatically requires preparation of the Environmental Impact Report. It is beyond question that an Environmental Impact Report is categorically required under both the General Laws and the MEPA Regulations.

Reference is made to M.G.L. Ch. 30, §62F. The second paragraph of Section 62F states:

"In the case of an urban renewal project proposed under chapters one hundred and twenty-one A or one hundred and twenty-one B, the specific procedure under section sixty-two A may permit land acquisition and other actions required for land acquisition to take place prior to the publication of the final environmental impact report provided that the secretary has issued notice of availability of an interim environmental impact report which demonstrates to the satisfaction of said secretary that an urban renewal project may be carried out on the proposed land with appropriate constraints as may be necessary to minimize and prevent damage to the environment."

Clearly, the Applicants propose an urban renewal project under Chapter 121A and by law may take..."other actions required for land acquisition" only if they have filed an interim Environmental Impact Report. The Application itself and the request that the Redevelopment Corporation to be formed be granted eminent domain powers under M.G.L. c. 80A are certainly actions required for land acquisition. At least an interim environmental impact report is required at this stage.

The MEPA Regulations, 301 CMR 10.01 et. seq. specifically delineate the authority and policy of the Secretary of Environmental Affairs in administering the MEPA law. Regulation 301 CMR 10.10(2) essentially tracks the statutory language of Chapter 30, Section 62F, and also requires an interim environmental impact report at the present stage.

Further, Regulation 301 CMR 10.32 sets forth by narrative a description of a variety of projects which categorically require Environmental Impact Reports and bar the exercise of any discretion by the Secretary in determining whether an Environmental Impact Report is required. Sub-section 16 to Regulation 301 CMR 10.32, Appendix C(5)(a)(16) states as follows::

"Any major joint development project, undertaken with state funds and/or state acquisition or transfer of land (including air rights) in conjunction with private developers or municipalities, having a total project cost in the Commonwealth in excess of \$20,000,000."

Interestingly, the Applicants' attorney, Mr. Daniel Mahoney, at the public hearing on the Amendment January 23, 1986 referred

to the project as follows:

"...[T]his project which is a joint project by the public sector and by the private sector through the 121A corporation to be formed..." (T.V. III at 13).

Thus, if there was any doubt, the Applicants themselves understand and describe that the nature of their project is such a joint development envisioned under sub-section 16 quoted above. It has never been an issue that the total project cost exceeds \$20,000,000.00.

Sub-section 18 of Appendix (5) Regulation 10.32 states as follows:

"Any project providing more than 1000 new parking spaces; any project generating the greater of 10% increase in Average Daily Traffic or 1000 Average Daily Traffic."

Again, it is undisputed that they are providing at least 1000 new parking spaces. The undersigned anticipates the Applicants will torture the phrase "a thousand new parking spaces" and claim they are only adding 450 additional (and therefore new) parking spaces to the prior existing 950 spaces, despite the fact that the existing 950 spaces will disappear during the construction period.

Such an argument would be to no avail even if it had merit because Section 18, quoted above, has a second test sweeping within the categorically required description any project generating the greater of 10% increase in Average Daily Traffic or 1000 Average Daily Traffic. Adding 450 spaces constitutes an increase of almost 50% in the Average Daily

Traffic even without considering the spaces reserved for the short term parking and turnover parking.

At least one other serious misrepresentation was made on the Environmental Notification Form. The so-called "scoping" section, 1(D) requires the Applicant to check areas "which would be important to examine in the event an Environmental Impact Report is required for this project. This information is important so that significant areas of concern can be identified as early as possible, in order to expedite analysis and review". There then follows a list of potential environmental impacts. Two spaces are provided to check off whether there will be "Construction Impacts" and "Long Term Impacts".

Next to "Air Pollution" the Applicants checked construction impacts, but not long term impacts. Buried in the back of that report (Appendix, p.30, Exhibit II-B) the Applicants admit that they will "...remove concentrations of noxious gases such as carbon monoxide through vents at the surface". In other words, at several points in the park, concentrated plumes of noxious gas will be vented into the atmosphere. This is a permanent, long-term impact on Air Pollution. This fact is buried in the back of the notification form, and misrepresented in the body of that document.

The Supreme Judicial Court has recently considered the actions of the Secretary of Environmental Affairs administering the MEPA Act in the case of Boston Preservation Alliance v. Secretary of Environmental Affairs, 396 Mass. 489 (1986). The

court discusses the jurisdictional basis for a full Environmental Impact Report if the BRA acted in an "agency status" in granting the several approvals to the International Place project. The court then discussed the unique status of the BRA and its dual role as a state agency as well as a municipal board and concluded that the approvals granted to the International Place projects were such that the BRA was acting in its capacity as a planning board for the City of Boston and thus wearing its municipal hat. Obviously, the Application to form the Post Office Square Redevelopment Authority is addressed to the BRA in its capacity as a state agency and puts this application within the class of projects which, if they are described in Appendix (5) of the MEPA regulations, categorically requires an Environmental Impact Report.

The MEPA Regulations and particularly 301 CMR 10.16 requires the Applicants to contact the Secretary of the Executive Office of Environmental Affairs if "a proposed project changes." The Regulation lists several factors for the Secretary to then consider which may warrant the resubmission of an Environmental Notification Form (ENF) and rescoping of the project or a new Environmental Impact Report. Among these is:

"(d) Change in expected commencement or completion date of project or schedule of work on project;"

The undersigned is informed and was prepared to produce evidence that the Applicants have not contacted the Secretary

of Environmental Affairs as required by 301 CMR 10.16. The Board's attention is invited to Section III of this Memorandum addressing the issue of fundamental change for a discussion of the sweeping changes in the Amendment compared to the original Application. Suffice it to say, the original Notification Form suggests commencement of construction in 1985 and estimates costs of \$35,000,000-\$37,000,000. It is predicated upon information long since stale. First Franklin hereby annexes, as exhibit "II-D", evidence that since the date of the public hearing on the original Application 3365 parking spaces in the core of the City of Boston have been removed and an additional 800 spaces are soon to be removed. That fact alone is a change requiring that the Secretary be contacted.

The letter of Secretary Hoyte attached hereto marked Exhibit "III-B", in its last sentence, imposes upon the Applicants the obligation to develop a plan which has a goal of encouraging ride sharing, van pooling and use of additional spaces if the project is designed for in excess of 1200 spaces, which is the case. Counsel for the Applicants admitted at the hearing on January 23, 1986 they had no such plan, but hoped to develop one. (T.V. III at 25). Further, the Amendment admits that the very program of the project, let alone its design, are to be formulated by a committee in the future. These statements and the Amendment are significant changes that require compliance with 310 CMR 10.16 so that the Secretary may react to the proposal as now envisioned and see that it is reviewed in accordance with the MEPA statute.

Unfortunately, First Franklin's argument may be viewed only as a procedural step in the furtherance of protecting its lease from the approval for eminent domain which is sought. It is important that the Board understand the genuineness of the environmental concerns so that the Board may make its statutory findings concerning the best interest of the City, the public, the public's convenience and the environmental impact of the project.

An indication of some of the potential environmental ramifications of this project can be gathered from Appendix, page 29, to the Applicants' Environmental Notification Form (attached in part as exhibit "II-C"). There the Applicants point out that the structure will be located below the maximum ground water level of twelve (12) feet (in fact a total of sixty-eight (68) feet below ground and fifty-six (56) feet below water level). Built within the excavation will be a parking facility which is impervious to the infiltration of water. This combination presents an extremely complicated engineering problem the solution to which the Applicants describe as one which must be "sufficient to react against hydro-static uplift pressures". In laymen's terms, they have to make sure it does not float.

The best the Applicants can do is tell the secretary and this Board that "a number of techniques are being considered". Appendix p. 29 to Environmental Notification Form. In two sentences, they suggest what they may do, but in

no place in the Environmental Notification Form or any documents or reports presented to this Board is there any indication whatever that this problem has been solved.

Both Secretary Hoyte in his letter and this Board, in its Report and Decision, have also expressed concern over the Environmental Impact of the loss of 950 parking spaces. Despite promises to solve this problem, the Applicants' solution is to come up with a process, to come up with a program, to maybe solve the problem. (See Sections III, V of this memorandum for the current position of the Applicants on this issue.) Neither the environmental effects of the loss of these spaces nor the effects of their alternative plan, if there is any, have been, or if this hearing is not stayed, ever will undergo a meaningful review.

The Legislature, in its wisdom, passed the Massachusetts Environmental Policy Act, M.G.L. Ch. 30, Sections 61-62H so that critical decisions affecting the environment would not be made in the dark. The statutory form as augmented by Regulations provides for comments from all affected state agencies and the public. The BRA should not make its important findings on the basis of what the Applicants choose to disclose. On the contrary, the BRA should allow the process to work and the proposal to be submitted under the MEPA Act to acquire the benefit of the comments of all public agencies to a draft Environmental Impact Report and ultimately to a final Environmental Impact Report before this Board gives its

imprimatur to a \$50,000,000 major construction project in the heart of downtown Boston.

CONCLUSION

The Applicants are required by law to submit an amended, updated and accurate Environmental Notification Form and the BRA should stay its public hearing on the Amendment until the MEPA statutory process has had its opportunity to work and address the aspects of the Applicants' proposal which will have a critical affect upon the environment.

EXHIBIT II-A

COMMONWEALTH OF MASSACHUSETTS
BOSTON REDEVELOPMENT AUTHORITY

SUFFOLK, ss.

* * * * *

*

IN RE: CHAPTER 121A *
APPLICATION OF POST OFFICE * MOTION TO STAY HEARING
SQUARE REDEVELOPMENT CORP. *
* * * * *

Now comes First Franklin Parking Corp. (hereinafter "First Franklin"), the Lessee of the property presently described as "The Project Area" and commonly known as the Post Office Square Garage and moves that this Board postpone its hearing until such time as the Applicants file an accurate and amended Environmental Notification Form. (Mass. Gen. Laws Ch. 30, Sec. 62A).

In support hereof, First Franklin says:

1. The Applicants submitted an Environmental Notification Form on July 29, 1983. A copy of said form appears as Appendix 11 to their original application.
2. Said Environmental Notification Form included materially false information, including, specifically, that an Environmental Impact Report was not categorically required. See 301 CMR 10.01, et. seq., including 301 CMR 10.03, 301 CMR 10.32(1).
3. An Environmental Impact Report is categorically required under MEPA regulations in that it is a project subject to the Massachusetts Environmental Protection Act, which is

included within 301 CMR 10.32, Appendix C(5)(a) sections (16) and (18).

4. The Project is also a Major and Complicated project under 301 CMR 10.10(2) for which an interim and ultimately a final Environmental Impact Report is categorically required.
5. An interim, and ultimately final, Environmental Impact Report is also categorically required for projects under Chapter 121A under the provisions of General Laws c.30, Section 62F.
6. Applicants have failed to contact the Secretary of the Executive Office of Environmental Affairs concerning proposed project changes as required by 301 CMR 10.16. The following changes have taken place since the submission of the original Environmental Notification Form:
 - a. change in the expected commencement date of The Project;
 - b. change in the expected completion date of The Project;
 - c. change in the schedule of work on The Project;
 - d. change in the expected cost of The Project;
 - e. new request for financial assistance;
 - f. those other changes set forth in the Applicants' amended application.

WHEREFORE, First Franklin Parking Corp. respectfully requests that this hearing be postponed until such time as the Applicants have complied with the Massachusetts Environmental Protection Act, G.L. c.30 Section 61 et seq and the regulations

thereunder.

First Franklin Corporation
By Its Attorneys,

Robert E. McLaughlin.
Robert E. McLaughlin.
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470 Atlantic Avenue
Boston, MA 02210
Telephone: (617) 482-1900

Dated: Jan 23, 1986
1278C



The Commonwealth of Massachusetts
Executive Office of Environmental Affairs
100 Cambridge Street
Boston, Massachusetts 02202

MICHAEL S. DUKAKIS
 GOVERNOR

JAMES S. HOYTE
 SECRETARY

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS
 ON THE
 ENVIRONMENTAL NOTIFICATION FORM

PROJECT NAME : Post Office Square Park
 PROJECT LOCATION : Boston
 EOEA NUMBER : 4855
 PROJECT PROPOSANT : Friends of Post Office Square
 DATE NOTICED IN MONITOR : August 5, 1983

Pursuant to M.G.L., Chapter 30, Section 62A and 10.04(9) of the Regulations Governing the Implementation of the Massachusetts Environmental Policy Act, I hereby determine that the above referenced project does NOT require the preparation of an Environmental Impact Report.

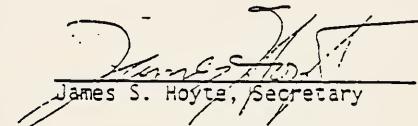
The proposal for an underground parking garage and at-grade park currently includes a size range of 950 to 1400 spaces. The replacement of the current above ground garage with an urban park is clearly a positive environmental step. However, increasing the number of parking spaces in the garage could present local traffic circulation problems, especially in the afternoon peak hour.

The current garage presents a remarkable traffic problem due to the time schedules of operation. Because of a pricing change which occurs at 8:00 AM, vehicles queue up regularly just prior to 8 AM and the waiting cars will block intersections along Congress and Pearl Street, extending down to High Street.

Therefore, the construction of a new garage facility with a reasonable schedule of morning operations should result in lesser traffic problems and congestion. However, increases in the number of garage spaces exiting at the afternoon peak hour could have significant effects on traffic circulation around Government Center and the Central Artery corridor.

The project proponent has suggested that about 350 spaces or more would be reserved for shoppers or short-term parking, with the balance to be provided for commuter parking. These spaces will generate some peak afternoon traffic, but minimal morning peak traffic. Based on staff review, I believe that a garage having approximately 1200 spaces, of which no more than 850 are commuter spaces, would provide equivalent peak hour movements to the existing garage, and thus have no additional impact. The proponent has agreed, for any spaces in excess of this figure (to a maximum of 1400), to develop and submit for review a plan which has the goal of encouraging ridesharing/vanpooling use of the additional spaces.

9/6/83
date



James S. Hoyte, Secretary

APPENDIX A
COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS

ENVIRONMENTAL NOTIFICATION FORM

SUMMARY

A. Project Identification Post Office Square Park

1. Project Name Post Office Square Park

2. Project Proponent Friends of Post Office Square, Inc.

Address One Post Office Square, Boston, MA 02109

B. Project Description: (City/Town(s)) Boston

1. Location within city/town or street address Site bounded by Pearl, Milk, Congress and Franklin Streets

2. Est. Commencement Date: 1985 Est. Completion Date: 1987

Approx. Cost \$ 35 - 37 million Current Status of Project Design: 5 % Complete

C. Narrative Summary of Project

Describe project and give a description of the general project boundaries and the present use of the project area. (If necessary, use back of this page to complete summary).

This project proposes the creation of a major public park within a highly visible and centrally located site in the financial district of downtown Boston. A parking garage currently located on-site will be removed, and a new underground parking structure will be provided beneath new open-space and pedestrian-oriented uses.

The 1.56-acre site is located within the area known as Post Office Square, and is bounded by Franklin, Pearl, Congress and Milk Streets. An unattractive and deteriorated four-level parking garage having 900-950 spaces covers the entire site, and has been directly associated with chronic traffic congestion in the area.

The new Post Office Square Park is envisioned as a dynamic urban green--a new and important element in Boston's network of public open space. Contributing to the revitalization of the financial district, and activating street life in an area largely deficient of public amenities (except for the small Angell Memorial Plaza across Milk Street from the site), the Park will fulfill a number of needed roles, including those of public plaza and civic common. The Park will be landscaped, while maintaining a sense of open space and daylight overhead. Pathways and other surfaces will be designed to encourage both internal strolling and cross-through diagonal movement. A wide spectrum of activities may take place in the Park, engaging the public in a variety of ways. Under consideration for inclusion in the Park are such conventional amenities as benches and fountains, as well as other more dynamic concepts such as exhibits, scheduled performances, skating, outdoor cafes (in season), and computerized informational programming.

Copies of this may be obtained from:

Name: Karen Alschuler Firm/Agency: Skidmore, Owings & Merrill

Address: 334 Bovlston Street, Boston, MA 02116 Phone No. 617-247-1070

Use This Page to Complete Narrative, if necessary.

Plans for a new garage constructed underground entail a four-to-six-level structure housing 950-1,400 parking spaces. Access and egress to the garage is planned from Pearl and Congress Streets, and would be designed to eliminate vehicle crossing conflicts at these points. The garage would also be designed to lessen congestion within area intersections, and to eliminate on-street queuing of arriving vehicles, especially during peak morning hours.

The proponent of this project--Friends of Post Office Square, Inc.--is a corporation created by a group of private businesses with shared interest in the welfare of the Post Office Square area. These businesses, including the First National Bank of Boston, the Shawmut Bank, the State Street Bank, the New England Telephone Company, and The Beacon Companies, have committed private resources in order to lay the groundwork for establishing open space in Post Office Square for the use and enjoyment of the general public. It is the objective of the Friends of Post Office Square to strike a true public/private partnership in the pursuit of this civic purpose.

This project is one which is categorically included and therefore automatically requires preparation of an Environmental Impact Report: YES NO X

D. Scoping (Complete Sections II and III first, before completing this section.)

1. Check those areas which would be important to examine in the event that an EIR is required for this project. This information is important so that significant areas of concern can be identified as early as possible, in order to expedite analysis and review.

	Construction Impacts	Long Term Impacts	Construction Impacts	Long Term Impacts
Open Space & Recreation	_____	X Mineral Resources	_____	_____
Historical	_____	Energy Use	_____	_____
Archaeological	_____	Water Supply & Use	_____	_____
Natural Resources & Wildlife	_____	Water Pollution	_____	_____
Vegetation, Trees	_____	X Air Pollution	X	_____
Other Biological Systems	_____	Noise	X	_____
Land Wetlands	_____	Traffic	X	X
Coastal Wetlands or Beaches	_____	Solid Waste	_____	_____
Land Hazard Areas	_____	Aesthetics	X	X
Chemicals, Hazardous Substances, High Risk Operations	_____	Wind and Shadow	_____	_____
Geologically Unstable Areas	_____	Growth Impacts	_____	_____
Cultural Land	_____	Community/Housing and the Built Environment	_____	_____
Other (Specify)	_____	_____	_____

2. List the alternatives which you would consider to be feasible in the event an EIR is required.

- a. No-Build
- b. Underground parking structure: 950 spaces, four levels
- c. Underground parking structure: 1,160 spaces, five levels
- d. Underground parking structure: 1,400 spaces, six levels

E. Has this project been filed with EOEA before? Yes No X
 If Yes, EOEA No. EOEA Action?

F. Does this project fall under the jurisdiction of NEPA? Yes No X
 If Yes, which Federal Agency? NEPA Status?

G. List the State or Federal agencies from which permits will be sought:

Agency Name	Type of Permit
-------------	----------------

See Attachment #1

H. Will an Order of Conditions be required under the provisions of the Wetlands Protection Act (Chap. 131, Section 40)?
 Yes No X

DEQE File No., if applicable:

I. List the agencies from which the proponent will seek financial assistance for this project:

Agency Name	Funding Amount
-------------	----------------

a. Boston Redevelopment Authority: Financial assistance under G.L. c.121A.

b. BRA, Massachusetts Department of Communities and Development, Boston Industrial Development Financing Authority, and/or MIFA, Massachusetts Department of Commerce and Development: Approvals in connection with financial assistance under G.L. c.40D CARD program.

II. PROJECT DESCRIPTION

A. Include an original 8½x11 inch or larger section of the most recent U.S.G.S. 1:24,000 scale topographic map with the project area location and boundaries clearly shown. Include multiple maps if necessary for large projects. Include other maps, diagrams or aerial photos if the project cannot be clearly shown at U.S.G.S. scale. If available, attach a plan sketch of the proposed project. Attached.

B. State total area of project: 68,000 square feet (1.56 acrest)

Estimate the number of acres (to the nearest 1/10 acre) directly affected that are currently:

1. Developed	<u>1.56</u> acres	4. Floodplain	<u>0</u> acres
2. Open Space/Woodlands/Recreation	<u>0</u> acres	5. Coastal Area	<u>0</u> acres
3. Wetlands	<u>0</u> acres	6. Productive Resources	
		Agriculture	<u>0</u> acres
		Forestry	<u>0</u> acres
		Mineral Products	<u>0</u> acres

C. Provide the following dimensions, if applicable: See Attachment #1.

Length in miles <u> </u>	Number of Housing Units <u> </u>	Number of Stories <u> </u>
	Existing	Immediate Increase Due to Project

Number of Parking Spaces

Vehicle Trips to Project Site (average daily traffic)

Estimated Vehicle Trips past project site

D. If the proposed project will require any permit for access to local or state highways, please attach a sketch showing the location of the proposed driveway(s) in relation to the highway and to the general development plan; Identifying all local and state highways abutting the development site; and indicating the number of lanes, pavement width, median strips and adjacent driveways on each abutting highway; and indicating the distance to the nearest intersection.

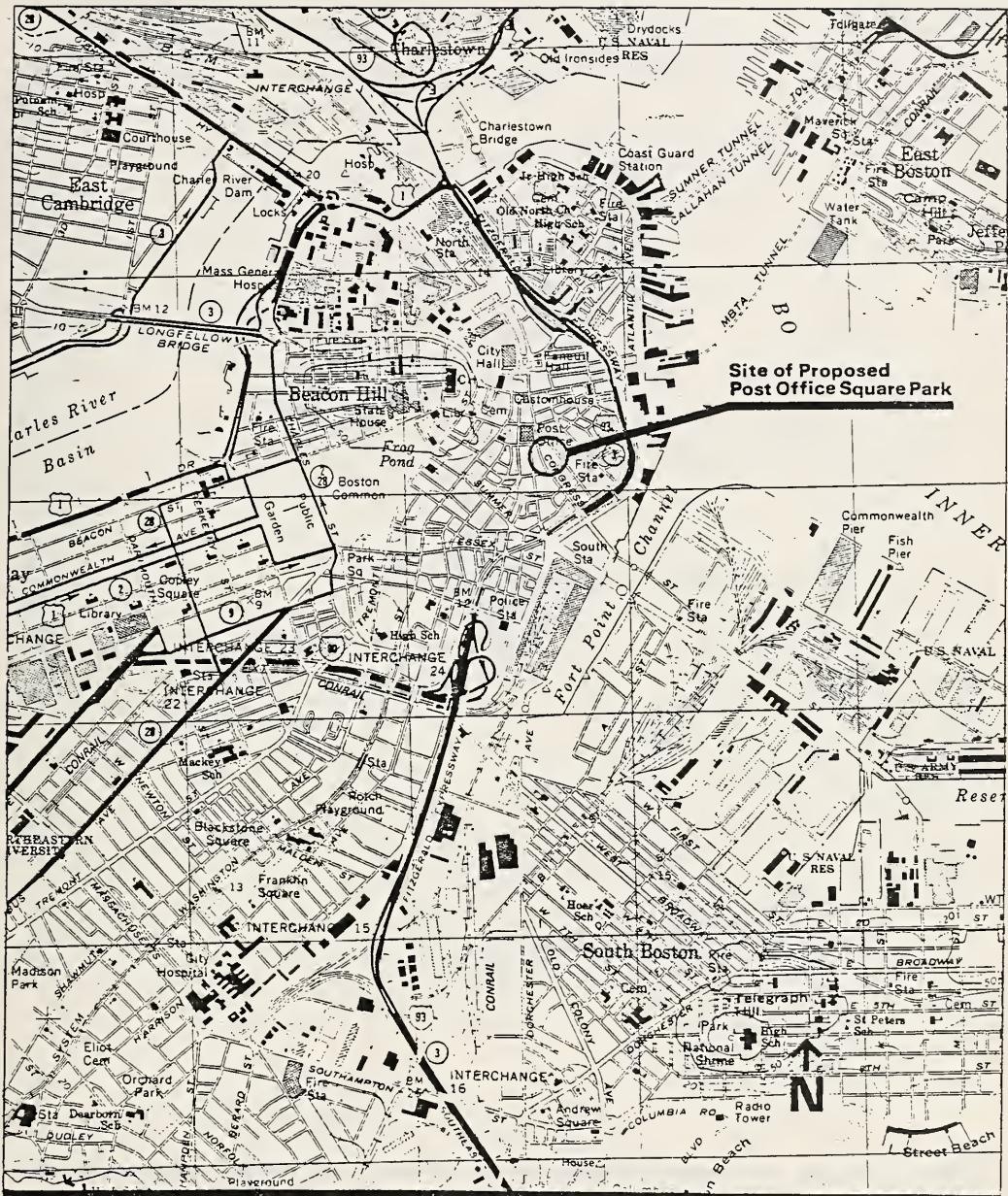
I. G.

- a. Boston Redevelopment Authority: Permits in connection with G.L. c.121A.
- b. Department of Environmental Quality Engineering:
 - (i) Possible permits under 310 CMR 7.00 et seq. (air pollution regulations).
 - (ii) Possible sewer connection permits under G.L. c.21.
 - (iii) Possible cross-connection permit under G.L. c.111.
- c. Metropolitan District Commission: Industrial User Discharge Permit and possibly other MDC permits under G.L. c.92.
- d. EOPS/Department of Public Safety: Miscellaneous possible permits/inspections under G.L. c.143, 146, 148 (tanks, burners, elevators, etc.).
- e. Architectural Barriers Board: Possible advisory rulings, permits or modifications under Architectural Barriers Board regulations.
- f. Massachusetts Historical Commission: Possible determinations under 950 CMR 71.00 et seq.

II. C.

	Existing		Immediate Increase ¹ Due to Project	
	Congress St.	Pearl St.	Congress St.	Pearl St.
Vehicles to Project Site (ADT)	900	185	0-500	180-515
Estimated Vehicles Past Project Site (ADT)	9,460	5,660	0-500	180-515
No. of Parking Spaces		950		0-450

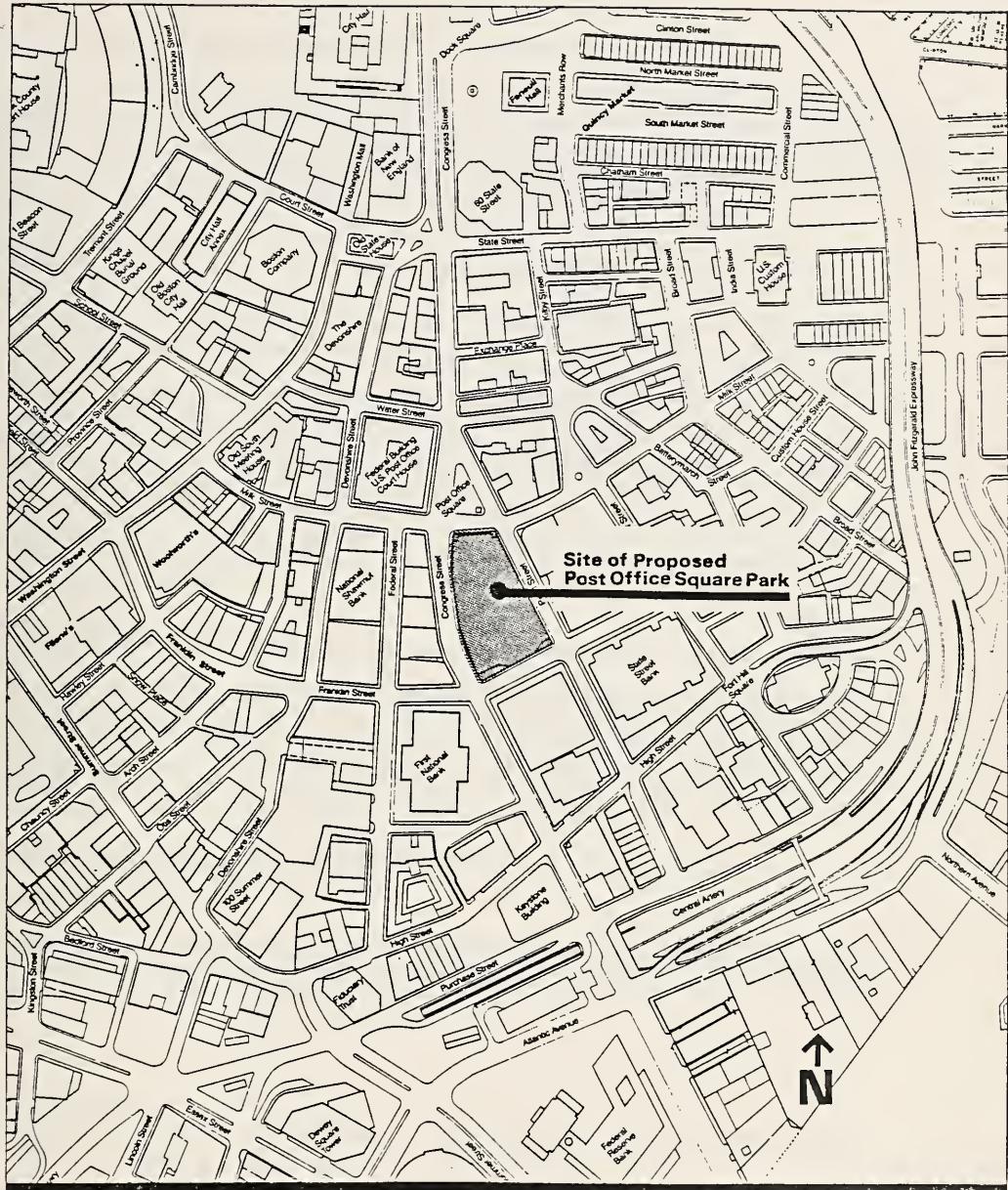
¹ Project alternatives vary from 950-space garage (same as existing) to a 1,400-space facility. Effects on traffic also vary with number of spaces reserved for short-term parking. Please see Appendix for more detailed review of traffic effects.



Locus Map: Post Office Square Park

Boston, Massachusetts

Scale 1:25,000



Site Vicinity Map Post Office Square Park Boston, Massachusetts

Scale 1:4800

ASSESSMENT OF POTENTIAL ADVERSE ENVIRONMENTAL IMPACTS

Instructions: Consider direct and indirect adverse impacts, including those arising from general construction and operations. For every answer explain why significant adverse impact is considered likely or unlikely to result.

Also, state the source of information or other basis for the answers supplied. If the source of the information, in part or in full, is not listed in the ENF, the preparing officer will be assumed to be the source of the information. Such environmental information should be acquired at least in part by field inspection.

A. Open Space and Recreation

1. Might the project affect the condition, use or access to any open space and/or recreation area?
Yes No

The project consists of the creation of a new 1.5-acre park utilizing natural landscape elements and involving a variety of urban recreational activities. The Park will be located within a high density area otherwise devoid of open space amenities. The new park will increase visual and pedestrian access to the smaller Angell Memorial Plaza directly to the north. The Park will entail an important new element in Boston's network of public open space, complementing such existing pedestrian open space areas such as Downtown Crossing, Quincy Market and Waterfront Park. Establishment of the Post Office Square Park will involve local businesses and institutions in the management of a major downtown open space area. Please see Appendix for a more detailed discussion of open space and public access issues.

B. Historic Resources

1. Might any site or structure of historic significance be affected by the project? Yes No

The former Federal Reserve Bank building--now the Hotel Meridien--is the only building in the immediate area of the site listed on the State Register of Historic Places. While areas of historic significance exist within walking distance of the site, the immediate vicinity of the Post Office Square Park is not considered an historic district. Please see Appendix for a more detailed discussion of the history of the site.

2. Might any archaeological site be affected by the project? Yes No

Explanation and Source:

According to discussion with the Massachusetts State Archaeologist, the presence of the existing parking structure has eliminated any likelihood of archaeological resources on-site.

C. Ecological Effects

1. Might the project significantly affect fisheries or wildlife, especially any rare or endangered species?
Yes No

Explanation and Source:

The project site--currently a parking garage--is located within the midst of a densely developed urban area supporting no fisheries, wildlife or endangered species.

2. Might the project significantly affect vegetation, especially any rare or endangered species of plant? Yes No X

(Estimate approximate number of mature trees to be removed: _____)

No significant vegetation currently exists on-site. Although demolition and reconstruction of the existing parking garage will necessarily cause some degree of dust to reach shrubs and trees in the small Angell Memorial Plaza across Milk Street from the site, this impact will be temporary. Viewed in the long-term, the project will create a new environment suitable for supporting vegetation appropriate to an inner-city park.

3. Might the project alter or affect flood hazard areas, inland or coastal wetlands (e.g., estuaries, marshes, sand dunes and beaches, ponds, streams, rivers, fish runs, or shellfish beds)? Yes No X

Explanation and Source:

According to the Federal Emergency Management Agency Flood Insurance Rate Map, the project area is not within a flood hazard area. No inland or coastal wetlands exist in the vicinity of the site.

4. Might the project affect shoreline erosion or accretion at the project site, downstream or in nearby coastal areas? Yes No X

Explanation and Source:

The project site is not in the immediate vicinity of any shoreline or coastal area.

5. Might the project involve other geologically unstable areas? Yes No X

Explanation and Source:

Preliminary geotechnical information indicates that the proposed structure could be properly secured within the geologic strata underlying the site.

D. Hazardous Substances

1. Might the project involve the use, transportation, storage, release, or disposal of potentially hazardous substances?

Yes X No

Explanation and Source:

The parking garage will entail the storage of automobiles which contain gasoline.

E. Resource Conservation and Use

1. Might the project affect or eliminate land suitable for agricultural or forestry production?

Yes No

(Describe any present agricultural land use and farm units affected.)

Explanation and Source:

The project site--currently a parking garage--is located within the midst of a densely developed urban area supporting no agricultural or forestry production.

2. Might the project directly affect the potential use or extraction of mineral or energy resources (e.g., oil, coal, sand & gravel, ores)? Yes No

Explanation and Source:

No such activities occur in the vicinity of the project site.

3. Might the operation of the project result in any increased consumption of energy? Yes No

Explanation and Source:

(If applicable, describe plans for conserving energy resources.)

No new surface uses are expected to consume significant amounts of energy. The new underground parking garage will be designed to increase the efficiency of area traffic movement, thus reducing energy consumption.

F. Water Quality and Quantity

1. Might the project result in significant changes in drainage patterns? Yes No

Explanation and Source:

Storm runoff will be reduced because the elimination of impervious surfaces at-grade will increase the site's ability to absorb water. The quality of remaining runoff will increase since drainage will not flush parking surfaces, as is now the case with the open upper-deck of the existing garage. Please see Appendix for a more detailed discussion of drainage issues.

2. Might the project result in the introduction of pollutants into any of the following:

(a) Marine Waters Yes No
 (b) Surface Fresh Water Body Yes No
 (c) Ground Water Yes No

Explain types and quantities of pollutants.

3. Will the project generate sanitary sewage? Yes X* No _____

If Yes, Quantity: _____ gallons per day

Disposal by: (a) Onsite septic systems Yes _____ No _____
 (b) Public sewerage systems Yes X No _____
 (c) Other means (describe) _____

*To the extent that the new underground garage will contain limited rest-room facilities.

4. Might the project result in an increase in paved or impervious surface over an aquifer recognized as an important present or future source of water supply? Yes _____ No X

Explanation and Source:

No increase in paved or impervious surfaces will occur as a result of the project, which is not located over an aquifer recognized as a present or future source of water supply.

5. Is the project in the watershed of any surface water body used as a drinking water supply?

Yes _____ No X

Are there any public or private drinking water wells within a 1/2-mile radius of the proposed project?

Yes _____ No X

Explanation and Source:

According to personnel of the Boston Water and Sewer Commission, no private drinking water wells exist within a 1/2-mile radius of the project site.

6. Might the operation of the project result in any increased consumption of water? Yes _____ No X*

Approximate consumption _____ gallons per day. Likely water source(s) _____

Explanation and Source:

*Except to the extent that new landscaping may require sprinkling during summer months.

7. Does the project involve any dredging? Yes _____ No X

If Yes, indicate:

Quantity of material to be dredged _____

Quality of material to be dredged _____

Proposed method of dredging _____

Proposed disposal sites _____

Proposed season of year for dredging _____

Explanation and Source:

G. Air Quality

1. Might the project affect the air quality in the project area or the immediately adjacent area?

Yes No _____

Describe type and source of any pollution emission from the project site. _____

The elimination of extensive queuing outside of the garage on area streets should remove the major source of air pollution associated with the Post Office Square parking facility.

2. Are there any sensitive receptors (e.g., hospitals, schools, residential areas) which would be affected by any pollution emissions caused by the project, including construction dust? Yes No _____

Explanation and Source:

Although no long-term pollution emissions will be caused by the project, demolition/construction dust will affect the small Angell Memorial Plaza across Milk Street from the site, and may also reach the Hotel Meridien, located across Pearl Street from the site.

3. Will access to the project area be primarily by automobile? Yes No _____

Describe any special provisions now planned for pedestrian access, carpooling, buses and other mass transit.

Although underground garage facilities will entail access by automobile, this is already an existing use and an existing condition. The new Post Office Square Park will entail a major new pedestrian-oriented facility, contributing to the area's overall attractiveness for pedestrian access and activity. Establishment of the Post Office Square Park will also complement and contribute to the City's growing network of areas amenable to people on foot.

H. Noise

1. Might the project result in the generation of noise? Yes No _____

Explanation and Source:

(Include any source of noise during construction or operation, e.g., engine exhaust, pile driving, traffic.)

While it is expected that typical demolition/construction-related noise will occur during the short-term, the ultimate placement of automobile-related activities within an underground structure will result in a long-term reduction in area noise.

2. Are there any sensitive receptors (e.g., hospitals, schools, residential areas) which would be affected by any noise caused by the project? Yes No _____

Explanation and Source:

Although no long-term noise generation will be caused by the project, demolition/construction-related noise will affect the small Angell Memorial Plaza across Milk Street from the site, and may affect the Hotel Meridien, located across Pearl Street from the site.

I. Solid Waste

1. Might the project generate solid waste? Yes No _____

Explanation and Source:

(Estimate types and approximate amounts of waste materials generated, e.g., industrial, domestic, hospital, sewage sludge, construction debris from demolished structures.)

Although garage and public park operations will not generate substantial amounts of solid waste, site preparation will generate construction debris associated with the demolition of the existing four-level, 1.5+ acre, reinforced concrete parking structure.

J. Aesthetics

1. Might the project cause a change in the visual character of the project area or its environs? Yes No _____

Explanation and Source:

As a result of this project, a major public park will replace an unattractive and deteriorated parking structure. This is of special importance because of the site's high visibility, both from several major view corridors on the ground, and from many surrounding high-rise buildings. The resulting visual character will be that of a landscaped open space oriented to active pedestrian use.

2. Are there any proposed structures which might be considered incompatible with existing adjacent structures in the vicinity in terms of size, physical proportion and scale, or significant differences in land use?

Yes _____ No

Explanation and Source:

In terms of land use and aesthetics, the Park's design will respond to conditions of its surrounding environment. Among current design goals are the enhancement of Angell Memorial Plaza, compatibility with adjacent buildings in terms of significant architectural elements and features, and the reflection of the area's history.

3. Might the project impair visual access to waterfront or other scenic areas? Yes _____ No

Explanation and Source:

The site is not visually linked to the Boston waterfront. Reconstruction of the existing garage as an underground structure, and the creation of a major public park on-site will contribute to visual access to the various architecturally significant structures in the surrounding vicinity, as well as to the nearby Angell Memorial Plaza.

K. Wind and Shadow

1. Might the project cause wind and shadow impacts on adjacent properties? Yes _____ No

Explanation and Source:

It is not expected that the elimination of the existing parking garage and the addition of landscaping on-site will entail any detrimental impact on adjacent properties in terms of wind or shadow.

IV. CONSISTENCY WITH PRESENT PLANNING

A. Describe any known conflicts or inconsistencies with current federal, state and local land use, transportation, open space, recreation and environmental plans and policies. Consult with local or regional planning authorities where appropriate.

Creation of the Post Office Square Park is consistent with the City of Boston's policies concerning downtown development such as those recently articulated in the Boston Redevelopment Authority's Downtown Crossing Economic Strategy Plan. These policies include reinforcing the identity of existing downtown districts, directing new development to areas of lower existing density, protecting the integrity of historic areas, and cooperating with the private sector in decisions affecting the development of the City's downtown. This project complements expansion of the program of pedestrian improvements in the Downtown Crossing area, and provides a vital link in a growing network of public open space leading to the Boston waterfront. Every attempt will be made to reserve a portion of the parking spaces provided in the reconstructed underground garage for short-term parking for use by downtown shoppers.

V. FINDINGS AND CERTIFICATION

A. The notice of intent to file this form has been/will be published in the following newspaper(s):

(Name) <u>The Boston Globe</u>	(Date) <u>July 29, 1983</u>
<u>The Boston Herald</u>	<u>July 29, 1983</u>

B. This form has been circulated to all agencies and persons as required by Appendix B.

July 29, 1983

Date

Norman B. Leventhal
Signature of Responsible Officer
or Project Proponent PKES

Norman B. Leventhal, Pres.

Name (print or type)

Address Friends of Post Office Square, Inc.

One Post Office Square, Boston, MA 02109

Telephone Number 617-451-2100

July 29, 1983

Date

Karen B. Alschuler
Signature of person preparing
ENF (if different from above)

Karen B. Alschuler

Name (print or type)

Address Skidmore, Owings & Merrill

334 Boylston Street, Boston, MA 02116

Telephone Number 617-247-1070

4. DESIGN/OPERATION CONSIDERATIONS

The design and operation of the Post Office Square Parking Garage will involve a number of special considerations which are typical for a subsurface parking structure located below parkland. The entire facility will have to be mechanically ventilated, adequately drained, protected from fire, and properly lit. The structure's roof and columns must be capable of bearing a heavy load, and all exterior surfaces must resist the infiltration of underground water. Special attention must be paid to the location of entrances, exits and vents in relation to surface uses, and sufficient depth above the structure must be provided to accommodate trees, plantings and utilities.

In order to protect the reconstructed Post Office Square Garage from infiltration of underground water, a number of techniques are being considered. These include the use of a continuous waterproof membrane on exterior surfaces, the use of a concrete additive to increase water resistance, pitching the underground roof to facilitate runoff and to avoid seepage, and backfilling foundation walls with relatively impervious material in order to minimize infiltration through the sides of the structure. Because the structure will be located below the maximum groundwater level of 12 feet (Haley & Aldrich, Post Office Square Garage Site Feasibility Study, 6/30/83), special design solutions will be needed to prevent infiltration through the bottom slab. An underdrainage system may be utilized to control the groundwater level below the structure. If this approach is used, a seepage cutoff system--an impervious curtain wall--will be installed around the structure's perimeter to prevent any effect on groundwater levels in adjacent areas. The bottom slab may be designed to resist hydrostatic uplift, which may also necessitate the use of soil anchors to hold the structure in place since the structure's weight may not be sufficient to react against hydrostatic uplift pressures.

Water entering the structure from sources such as snowmelt or rainwater carried in on automobiles, will drain along floors sloped 1-2% to a system of floor drains located at frequent intervals. The system will be designed to avoid pooling in areas frequented by garage users. This system will also minimize dangers due to icing, although freezing is less of a problem in an underground garage where temperatures fluctuate less than in a surface structure. Floor drains will be tied into an ejection system which will pump water up to municipal storm drains near the surface.

A mechanical ventilation system will draw air from the surface into the garage, and will remove concentrations of noxious gases such as carbon monoxide through vents at the surface. Ventilation equipment will include carbon monoxide detection devices which signal garage personnel if carbon monoxide levels exceed acceptable limits. Surface ventilation port(s) will be located to minimize effects on surface park uses.

Public utilities utilized by the garage will include electricity, water supply and public sanitary and storm sewerage. The primary use of electricity will be to operate interior lighting during all hours of operation and to power ventilation and pumping equipment. Water supply outlets will be located at each level for occasional use in cleaning procedures, and the entire structure will be sprinklered to prevent fire. Restrooms will be provided for employees, and may also be provided for garage users. The Boston Common Garage (1,530 spaces, eight employees during main shift) provides two public toilets and two employee toilets; however, many other parking garages provide no public restrooms due to security issues. Sewage from such facilities will be pumped up to the municipal sanitary sewerage system.

Routine maintenance of the parking structure will entail activities such as daily sweeping/scrubbing of floor surfaces, clean-up of oil or grease drippings (application of degreasing chemical, then vacuumed up), cleaning of floor drains and checking of carbon monoxide monitoring equipment. Less frequent maintenance activities will include checking ventilation and drainage pumping equipment, and repair of any cracks or damage to floors, ceilings or walls. A floor sealer will be applied periodically, as needed, to prevent concrete dusting and to facilitate the easy clean-up of oil or grease dripped onto the floor by automobiles.

EXHIBIT II-D

Parking lots and Garages that no longer exist

<u>Location</u>	<u>Approximate Spaces</u>		
Devonshire & Milk St	100	100.00	+
Oliver St (Allright Lot)	60	60.00	+
Atlantic Ave (Boston Auto Parks)	150	150.00	+
Atlantic Ave (Fitzinn)	70	70.00	+
Cage Garage	140	140.00	+
Custom House St	35	35.00	+
Oliver Street	60	60.00	+
High Street Lot	150	150.00	+
Fort Hill Sq Garage	400	150.00	+
High St Garage	350	400.00	+
International Development Site 2 Lots	200	350.00	+
Corner Federal & High	40	200.00	+
Sullivan Place Lot	200	200.00	+
Kingston & Bedford Lot	80	40.00	+
Lincoln St Garage (reduced to 100)	500	200.00	+
Haywood Place Garage	500	80.00	+
Dewey Sq	200	100.00	+
Old Boston Globe Site- Devonshire St Lot	100	500.00	+
State & Kilby Sq Lot	30	500.00	+
		200.00	+
		100.00	+
		50.00	+

Parking lots and Garages soon to go

5,365.00 T

<u>Location</u>	<u>Approximate Spaces</u>		
Bedford & Kingston Elevator Garage	400	400.00	+
Kilby St Elevator Garage	300	300.00	+
Washington St & Haywood Place Lot	100	100.00	+
		800.00	T
		C.O.	

C.O.

2,515.00 +
800.00 +

4,135.00 T

PART III:
SECTION IN SUPPORT OF A FINDING THAT THE APPLICANT'S
AMENDMENT CONSTITUTES A FUNDAMENTAL CHANGE IN THE PROJECT

INTRODUCTION

The purpose of this Section is to submit legal argument on the Fundamental Changes included within the Amendment proposed by the Applicants.

ARGUMENT

Basic due process requires adequate notice of the nature of a hearing which may affect basic property rights and an opportunity to be prepared and to be heard in opposition to any evidence submitted at a public hearing and to otherwise oppose an Application affecting property rights.

Massachusetts General Laws, Chapter 121A, as amended, and Statute 1960, Chapter 652, as amended, Section 13 states in part:

"If a proposed change is not a fundamental one, the Authority may approve or disapprove the Application as amended without further hearing or report; otherwise, the Authority shall proceed as if the hearing is a new application."

The BRA Regulations, Rule 6 in substance, tracks the language of the statute. First Franklin is entitled to notice and a ruling from the BRA concerning whether it is treating the Applicant's Amendment as one which is not fundamental or whether the Authority is proceeding as if it were a new Application.

It is respectfully submitted that upon a review of the Amendment and its several exhibits, it is abundantly clear that the proposed changes are fundamental and that by law and the BRA Regulations, the BRA is compelled to find that the Amendment provides for a fundamental change to the project and to proceed as if the Amendment were a new Application. First Franklin invites the Board's attention to the following which require a finding of fundamental change:

a. Filing Fee

The BRA Regulations, Rule 1, Subdivision (d)(1) speaks to the filing fees which shall accompany any Application submitted to the Authority. This Rule requires a filing fee of \$5,000 with every Application and continues..."that any Amendment to such Application which requires a public hearing shall be accompanied by a filing fee of \$3,500." The Regulation continues that any other Amendment requiring a vote of the Authority shall be accompanied by a filing fee of \$2,500.00. The Applicants themselves paid a \$3,500 filing fee with their Amendment and the matter was readvertised for a public hearing. A public hearing would not be required if the proposed change was not a fundamental one. The Applicants themselves were well aware that the sweeping changes to their proposal they seek in their Amendment would never stand the test of judicial review unless presented at a public hearing

and they are necessarily admitting that the Amendment proposes changes which are fundamental. Therefore, by law, the Authority must proceed as if this were a new Application.

Addressed in Section V is a detailed analysis of the effects and the nature and character of the changes that are proposed. At this point, however, the major and fundamental changes should be addressed briefly so that the Board may understand that the changes are fundamental.

b. Program

The Board's attention is invited to Exhibit A of the Amendment which is entitled "Development Agreement" and particularly Article II, beginning on page 8 thereof.

At the hearing on the original Application two years ago, plans and architects' renditions were displayed and narrative explanation offered concerning the proposed new underground garage and surface urban park. Then the alleged merits of the proposal were touted and compared with the alleged decadence and problems with the existing garage maintained by First Franklin. Apparently, the proposals presented two years ago have been abandoned. Now we find that a new committee is to be appointed, dubbed "The Program Development Committee". This committee will study the site, urban parks in general and parking garages to determine the program elements of a successful open space and underground parking garage. Ultimately, the committee will submit a report

which must be approved by the Authority within thirty days after receipt. It should be noted that by paragraph 11.1, paragraph A appearing on page 36, the only approval of the Authority necessary is the approval of the Director of the Authority and not its Board of Directors. Whatever the program is to be, it is reasonable to assume the original program explained two years ago has been abandoned and a new program, perhaps radically different, is in the offing. This is a fundamental change to the original proposal.

C. Design

Similarly two years ago, reasonably detailed architectural plans depicting the underground structure with typical floor plans, cross sections, access ramps, queuing aisles, ventilation vents, and the like, were shown to the members of the BRA Board of Directors. Equally detailed plans and design for the surface park were explained and extolled. At the hearing two years ago, the Applicants produced William Porter, consultant on architecture and planning, who at length explained the beneficial features of the project as then designed and its compatibility with the surrounding buildings and cityscape (T.V.I at 44-49).

As is the case with the program, now, another committee is to be formed called the "Design Review Committee". The Design Review Committee will review and evaluate not less than three design proposals yet to be

created, and ultimately, after receipt of public reaction to the design, a final design is to be settled upon. The final design is to be submitted to the Authority purportedly for the Authority's review in accordance with the Authority's standard design review procedures, "except to the extent that such procedures are not inconsistent with the provisions of this Agreement and any other agreement relating to the Project" (Amendment, Exhibit A at 11). Again, any approval required by the Authority is to be given not by the BRA Board of Directors, but only by the Director of the BRA.

Presumably, the design displayed at the public hearing two years ago has also been abandoned. The elaborate procedures discussed above which only summarize the even more elaborate procedures in the Development Agreement itself, clearly envision a whole new design of the project and obviously represent a fundamental change in what the garage and the park may look like compared to the original Application and its design as explained by William Porter at the public hearing two years ago.

d. Alternative Parking Plan

At the hearing on the original Application, the Applicants had no definitive alternative parking plan to minimize the tremendous anticipated traffic congestion occasioned by the removal of 950 parking spaces during the period of construction. The Applicants' first proposed

devising a plan for the approval of the BRA. The Amendment contained in Section 3 of the Development Agreement suggests the Applicants will still attempt to develop a plan for temporary replacement parking during construction. The plan is now to be subject to approval by the City and not the BRA. The plan now proposed is fundamentally different, however, in that it cannot be a losing proposition.

In paragraph 3.2 as appearing in the middle paragraph of page 13 of the Development Agreement, the Applicants are insured that the temporary parking they originally offered to produce in some fashion will now be such that if it produces insufficient revenues to cover the operating costs, the Applicants may request to move or close the facility and the City cannot unreasonably withhold or delay its approval to any such request. Obviously, providing alternative parking with shuttle bus service, as is suggested, will result in insufficient revenues (or else someone else would have gone into this business long ago) and the ostensible obligation to provide alternative parking will disappear completely. The complete absence of any guarantee that some action will be taken, or evidence that any efforts have been made to solve this problem over the last two years, is a fundamental change in the project.

e. Financing

A considerable amount of the original Application and

the testimony adduced at the prior hearing was in furtherance of the Applicants' contention that their proposal was practical and financially feasible. (See the detailed letters from Goldman, Sachs & Co. (Appendix 5 to the Original Application) and the Construction Financing Commitment from Manufacturers Hanover (T. V.I at 30) which were part of the original Application). Based on these now withdrawn documents the Board found this Project practicable.

The Applicants have abandoned their original financing plan. One may merely review the statements of James White, representing the Applicants at the hearing on January 23, 1986. Mr. White said:

"As you can well appreciate, in the period of time that has elapsed since we started this process, the financial markets have shifted quite a bit, and as you may recall at the outset, the financing plan that we presented involved the use of bond financing, tax-exempt financing. That may or may not be possible now." (T.V. III at 28).

A new and obviously fundamentally different financial plan is to be concocted in the future and never seen again or approved either by the BRA or its Director. All of the past promises, opinions and guarantees are withdrawn. Now, the City has a right to disapprove proposed financing under severe time constraints and only with bona fide reasons for disapproval stated in writing.

f. Department of Revenue Approval

The BRA adroitly required the approval in writing from

the Department of Revenue of the Commonwealth of Massachusetts to the Applicants' novel approach to the calculation of its annual excise tax under Section 10 of Chapter 121A. As presented by the undersigned at the public hearing on January 23, 1986, Commissioner Ira Jackson, Commissioner of the Department of Revenue, has not given his approval and, it is respectfully submitted, the Applicants know he will not give his approval. The request to delete the Commissioner of Revenue's approval impacts the very essence of the BRA's approval of the Applicants' novel and precedent setting approach to determining the excise tax.

CONCLUSION

It is overwhelmingly clear that the Amendment and its ramifications strikes to the very core of the project plan, with fundamental changes to the proposal as originally presented two years ago. The statute and Regulations above-quoted require, as a matter of law, that the BRA proceed as if this were a new Application. This would allow the Applicants new plans, such as they are, to be tested for consistency with the statutory requirement of practicability, convenience, etc. It is awkward at the least to determine how much of the original Application is still viable and it is respectfully requested that the appropriate ruling of the BRA is to order the Applicants to re-file, as best they can, a new coherent Application. In the alternative, the law requires the

present, confused submissions of the Applicants, as amended, to proceed as if this were a new Application. Therefore, the Applicants must go forward and adduce such evidence as they are able in support of their contention that the Board is warranted in making its several statutory findings. Thereupon, First Franklin's proper role would be to produce its evidence in opposition to the Applicants' case.

PART IV

SECTION IN SUPPORT OF MOTION TO AMEND REPORT

INTRODUCTION

First Franklin Parking, on or about January 14, 1986 filed a Motion to Amend Report of May 10, 1984. A copy of this motion is attached to this Section for the convenience of the Board and marked Exhibit "IV-A". It is this counsel's understanding that at adjournment of the public hearing of the First Amendment to the above entitled Application on January 23, 1986, the Board ruled it would receive, consider and make part of the record supplemental evidence in written form so that BRA may consider amending the decision and report dated May 10, 1984. (T. V.III at 55-56). Therefore this Section will very briefly discuss the legal basis in support of the BRA ruling to consider additional evidence and will contain in the body of this Section and as incorporated herein certain Exhibits which will constitute the written evidence to be considered and made part of the record.

LEGAL ARGUMENT

The Applicants filed an original Application on November 14, 1983. It contained numerous exhibits which were

prepared in August, September and October of 1983. The public hearing on the Application was conducted in December 1983 and January 1984. The most recent evidence of any kind considered by the BRA is the Simpson Gumpertz & Heger, Inc. report dated March 3, 1984 (hereinafter "Simpson Report") which followed a limited visual inspection in February 1984. The findings of the BRA contained in its report and decision dated May 10, 1984 are purportedly predicated upon evidence between 2 and 2 1/2 years old and therefore stale.

Under the provisions of the controlling statutory scheme, judicial review is by certiorari or now by complaint in the nature of certiorari. In most circumstances the hearing on judicial review is limited to a review by the Court of the assignments of error alleged by the Plaintiff as appearing within the record made part of the return from the Administrative Agency. In every true sense the only hearing to determine the facts which may affect substantial and constitutionally protected property rights is the hearing before the Administrative Agency, in this case, the BRA. Therefore, fundamental due process must be accorded to First Franklin at the public hearing on the above entitled application. The proposition that a party is entitled to confront evidence and respond to the same as a fundamental incident of due process need no citation. The BRA regulation Rule 4(B)(2) recognizes the opponent's right to introduce evidence to rebut the evidence of the proponent.

Beyond due process, the Supreme Judicial Court in Boston Edison Co. vs. Boston Redevelopment Authority 374 Mass 37, 60 (1977) has discussed the propriety of predicating a finding of decadence upon prior determinations and held.

"However, in cases in which such a prior determination has been made some years earlier, some data or information concerning the present characteristics of the site should also be contained in the record to satisfy the substantial evidence test."

In that case the BRA had before it extensive evidence concerning the current condition of the area. It is necessary and proper in this application for the BRA to have before it current information concerning the conditions of this site. Otherwise, no substantial evidence exists on this threshold issue.

The public hearing on the original Application concluded on January 19, 1984. Thereafter, apparently the BRA engaged Simpson, Gumpertz & Heger, Inc. which reportedly made a visual inspection of First Franklin's property. Simpson, Gumpertz & Heger, Inc. submitted a written report on March 3, 1984 (hereinafter the "Simpson Report") which was relied upon heavily by the BRA in making its finding in the Report and Decision. First Franklin challenges the findings and conclusion of the Simpson Report and it is proper for the BRA to now allow, at least in written form, substantive evidence to be considered by the BRA in deciding whether to amend its Report and Decision.

At the public hearing on the Amendment to the Application, counsel for the Applicants admitted the financing envisioned in the original Application is no longer viable due to significant changes in the financial markets and the federal tax laws, (see Section III, supra). The Amendment itself seeks to change the program design, alternative parking, the public's right to use 140 of the proposed garage spaces, and numerous other aspects of the proposals as originally presented. The BRA's attention is invited to Section III addressing the issue of fundamental change. Unless First Franklin is permitted to introduce substantive evidence in opposition to the Application, as now amended, First Franklin will be denied any opportunity to present evidence in opposition to the evidence of the proponent on the several statutory findings which the BRA must make.

For all of the foregoing reasons the Board properly allowed First Franklin to submit, in writing, additional substantive evidence to be considered. First Franklin requests that at any subsequent public hearing it should be allowed to produce this and supplemental evidence in the form of oral testimony.

SUMMARY OF SUBSTANTIVE EVIDENCE

The project area is not a decadent area. First Franklin challenges the finding contained in the BRA's original

Report and Decision that the garage is a decadent area and challenges the finding that any conditions or alleged deterioration are not capable of repair without recourse to the remedy provided by Chapter 121A.

Since the conclusion of the public hearing on the original Application and, particularly, from February 1, 1984 through and including December 1, 1985, First Franklin has expended the sum of Four Hundred Fifty Seven Thousand One Hundred Seventy One Dollars and Sixty Cents (\$457,171.60) on the garage. In addition, First Franklin has continued to expend sums during January 1986 and estimates that when all of charges are received an additional Forty Seven Thousand (\$47,000.00) Dollars will have been spent for maintenance and repairs for January 1986. Therefore, in the two full years following the conclusion of the public hearing on the Application, First Franklin has expended Five Hundred Four Thousand One Hundred Seventy One Dollars and Sixty Cents (\$504,171.60) for maintenance, upgrading and repairs.

Attached to this Memorandum marked as Exhibit "IV-B", and incorporated herein by reference, is the Affidavit of James P. Milone, Vice President and Comptroller of First Franklin who, under oath, verifies the expenditures for maintenance and repairs. Attached to his Affidavit is a breakdown, by contractor and building trade, setting forth the amounts of money spent each year for the maintenance and repairs to the garage operated by First Franklin.

Also attached hereto marked Exhibit "IV-C" and incorporated herein by reference is the Affidavit of Stephen Lally supervisor of the building maintenance division of the Brattle Company, which manages properties, including the Post Office Square Garage. Mr. Lally's Affidavit details in paragraphs 4a - cc the maintenance and repair work that has been accomplished in the garage during 1984, 1985 and to the date of his Affidavit January 23, 1986. Also attached hereto, marked Exhibit "IV-D" and incorporated herein by reference, is a report of Chapin Associates, Inc. Structural Engineers (hereinafter "Chapin report"), which in summary is a registered engineers item by item rebuttal to the observations and finding contained in Simpson Report.*

The Report and Decision of the BRA, particularly paragraph D, thereof sets forth the findings of the BRA in support of its conclusion that the project area is a decadent area. The Affidavits of Mr. Milone, Mr Lally and the engineering report of Chapin Associates, Inc. provide current evidence that every item of physical deterioration, lack of repair and need of maintenance contained in the Simpson Report and adopted by the Report and Decision, has been addressed, corrected and repaired save the removal of sections of the

* Note that the Chapin report, Exhibit IV-D refers to a prior report and a load test report as attached. Since the prior report is already on the record, and the load test report follows as exhibit IV- E, additional copies have not been submitted by attaching them to the report.

slab itself and the replacement with new reinforcing steel bars and a new layer of concrete.

The Simpson Report questioned the structural integrity of the Post Office Square Garage building based on observations of the deterioration of parts of the concrete slab. One recommendation was to remove the areas of concrete and rebuild the slab where the deterioration was observed. The Simpson Report concluded, however, that the structural deterioration they observed on the second and third floor slab was serious enough to warrant their strong recommendations that the First Franklin should commission a comprehensive construction review of the garage.

The Applicants also presented the testimony of Mr. William Lemessurer. (T.V. II at 42-62). He provided a "walk through" of the garage and offered observations concerning deterioration. Both exhibits IV-C and IV-D indicate that almost all of the defects observed by Mr. Lemessurer have been remedied.

At the hearing on the original application on January 19, 1984 Mr. Joseph Walsh, Vice Chairman of the BRA Board of Directors, asked the structural engineer Edward J. LeNormand whether there exists a test which could be employed to determine the present load capacity of the garage. Mr. Edward J. LeNormand replied it was possible to run a load test (T. V.II at 2-36-37).

Instead of removing whole sections of existing slabs and replacing them with reinforcing rods and concrete, First Franklin elected to first follow the strong recommendations of the Simpson Report and pursue the load test suggested by the questions of Vice Chairman Joseph Walsh. First Franklin commissioned Chapin Associates, Inc. and under the direction of Edward J. LeNormand, P.E. conducted a load test. Attached to this Memorandum marked Exhibit "IV-E" is the Chapin Associates, Inc.'s report (hereinafter "load test report") on the load test dated January 22, 1986. Both engineers namely Simpson, Gumpertz & Heger, Inc. and Chapin Associates, Inc. agree that the building was constructed with design live load capacity as follows:

<u>Level</u>	<u>Design Live Load (pounds per square foot)</u>
Roof	130
Second	100
First	150
Ramps	150

Both engineers further agree that the present state code requires a parking garage design live load capacity to be only 50 pounds per square foot. As set forth more fully in the load test report, so as not to have any criticism, the area of the load test was conducted on the weakest structural area of the garage. In other words, rather than performing the test on

the first floor or ramps which were designed for 150 pounds per square foot or the roof which was designed 130 pounds per square foot, the test was conducted on the second level, designed for only 100 pounds per square foot. The area on the second floor where the test was conducted consisted of an area of approximately 55 by 65 feet, a total of 3575 square feet. The location selected represented the worst area of deterioration on the second floor.

The Board's attention is invited to the photographs contained in the load test report as well as the additional photographs submitted herein as Exhibit "IV-F". In substance, a 24 inch high wading pool was constructed and filled with water to average depths of 17 3/4 inches. Figure 3 attached to the report shows the grid established across the wading pool and the actual depths of water at each location. At several locations the depth exceeded 19 inches.

We learned in junior high science class that a cubic foot of water weighs 62.4 pounds and therefore when the pool was filled to 12 inches deep the slab was experiencing a live load of 62.4 pounds per square foot. At an average depth of 17 3/4 inches, the live load was 93 pounds per square foot on the weakest slab in the garage. (Nineteen inches of water represents approximately 100 pounds per square foot.) By reference to figure 3 in the load test report, it is apparent that in numerous areas the slab under went a live load in excess of 100 pounds per square foot.

The load test report describes monitoring conducted during the test and the exceedingly limited and almost non-existent deflection observed as compared to what Mr. Edward J. LeNormand expected to observe. Mr. LeNormand would testify he expected to observe a deflection of 1/2 inch. His instrument detected less than 1/8 inch.

The area in which the test was conducted could accommodate as many as 24 automobiles. If we assume the average weight of an automobile to be 3,000 pounds, we would expect the average weight on the area of the test by the parking of automobiles to be 70,000 pounds. The total weight of the water contained in the pool and bearing on the slab, as set forth in load test report was 329,973 pounds. The weight of water was more than 4 1/2 times the weight anticipated of the parking of automobiles.

The present building code requires that each floor hold 50 pounds per square foot. The load test report conclusively establishes at minimum that in the apparent weakest area of the garage the live load capacity of the slab is slightly above 92 pounds.

As a result of the live load test any questions or doubts raised by Simpson, Gumpertz & Heger, concerning the structural integrity of garage have been laid to rest. Further their recommendation to remove areas of concrete and rebuild slabs with steel and concrete is unnecessary and an obvious fool hardy waste of money. First Franklin has commenced and

will continue to cause repairs to the area where the reinforcing steel has been exposed so as to prevent any deterioration of the bars. We submit this procedure is more than adequate in the light of the above-described live load test.

Given the expenditure of over one half million dollars, the findings of the Chapin Report, the repair work detailed in the Affidavit of Stephen Lally which addresses every alleged condition in the Post Office Square garage building (except exposed reinforcement rods) and the live load test, the present condition of the garage cannot warrant a finding that it is decadent or makes the project area detrimental to the safety, health, and welfare to the public. The finding in the BRA Report and Decision that the garage is decadent is stale and clearly misplaced. The design of the garage was commissioned by the City of Boston and it adequately houses 950 automobiles today. The alleged traffic congestion is a direct result of the rate structure imposed by the City of Boston. This is capable of being cured if city saw fit to alter the daily rate structure of the garage.

CONCLUSION

The garage is neither obsolete nor decadent. The evidence provided herewith makes these points conclusively. No substantive evidence exists for a finding of decadence or obsolescence.

COMMONWEALTH OF MASSACHUSETTS
BOSTON REDEVELOPMENT AUTHORITY

SUFFOLK, ss.

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*
IN RE: CHAPTER 121A *
APPLICATION OF POST OFFICE *
SQUARE REDEVELOPMENT CORP. *
*
* * * * * * * * * * * * * * *

MOTION TO AMEND REPORT AND DECISION
OF THE BOSTON REDEVELOPMENT AUTHORITY
DATED MAY 10, 1984

Now comes First Franklin Corporation, the Lessee of the property presently described as "The Project Area", and commonly known as the Post Office Square Garage and moves for leave to submit supplemental evidence so that the Authority may amend the Decision and Report of the Boston Redevelopment Authority ("the Board") dated May 10, 1984 by striking out the first paragraph of (B), subparagraph (d), described as "The Project Area" in said Report, and any other portions of the report where the passage of time requires the amendment of the Board's findings and conclusions and assigns as cause therefore the following:

1. The findings made by the Boston Redevelopment Authority as therein set forth were based upon "the evidence contained in the application and presented at the public hearing, an inspection of The Project Area by the members of the Authority and the Report of Simpson, Gumpertz & Hagger, Inc., consulting engineers to the Board."

2. The inspection by Simpson, Gumpertz & Hagger, Inc. is dated March 3, 1984 and the finding of the Board was dated May 10, 1984.
3. The finding of the Board that The Project Area is decadent as that term is defined in Section 1, Chap. 121A is now twenty months old. Since that period of time, extensive repairs, costing several hundred thousands of dollars have been made to The Project Area and said findings no longer reflect the true condition of The Project Area as will be established by evidence to be presented at said continued hearing.
4. The evidence presented concerning financial feasibility and cost of the project is over two years old. There have been substantial changes which render many of the assumptions inaccurate.

First Franklin Corporation
By Its Attorneys,

Walter H. McLaughlin, Sr.
Walter H. McLaughlin, Sr.
Gilman, McLaughlin & Hanrahan
470 Atlantic Avenue
Boston, MA 02210
Telephone: (617) 482-1900

Dated: Jan. 14-1982

1208C



COMMONWEALTH OF MASSACHUSETTS
BOSTON REDEVELOPMENT AUTHORITY

IN RE: CHAPTER 121A
APPLICATION OF POST OFFICE
SQUARE REDEVELOPMENT CORP.

AFFIDAVIT OF JAMES P. MILONE

Now comes James P. Milone, who after having been duly deposed and sworn on oath, states as follows:

1. My name is James P. Milone. I reside at 4 Eugley Park East, North Reading, Massachusetts.

2. I am the Vice President and Comptroller of First Franklin Parking Corporation, the tenant and operator of the Post Office Square Garage. I have been employed in this capacity since 1981.

3. I created the attached ledger sheet, marked Exhibit "A", which accurately reflects expenditures made by First Franklin Parking Corp. for maintenance, upgrading and repair of the Post Office Square Garage for fiscal years 1984, and 1985 through December.

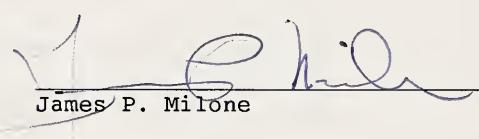
4. I also included on that ledger sheet my estimates of expenditures made by First Franklin Parking Corporation for maintenance, upgrading and repair of the Post Office Garage for the month of January, 1986.

5. First Franklin has retained the services of Frank Presto, a general contractor, to carry out much of the work. First Franklin has also retained the services of William

Larson, an electrical contractor for electrical installation and repair, which work is detailed on the Affidavit of Stephen Lally, Supervisor of Building Maintenance for "Sawyer" properties, specifically including the Post Office Square Garage.

6. The total amount expended for the materials, security and contractors for the 23 months represented is \$457,171.60. The total amount estimated for January, 1986 is \$47,000.00. The total is \$504,171.60.

Signed under the pains and penalties of perjury this 23rd day of January, 1986.

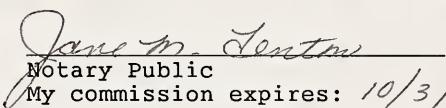

James P. Milone


COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

JANUARY 23, 1986

Then personally appeared James P. Milone who after having been duly sworn, stated that he had read the foregoing affidavit and the facts contained therein are true, before me,


Jane M. Lenton
Notary Public
My commission expires: 10/3/91

FIRST Franklin Parking Corporation

Repair and Maintenance Expenses

Actual 1/1/84 to 1/31/85, 21110 to 12/31/85, Estimated 1/31/86

Vendors	1 1/1/84	2 to 1/31/85	3 21110 12/31/85	4 1/31/86	5	6 Total
Frank Paesko (Construction)	42741.65	40741.65	11000			94483.30
Bill Larson (Electric)	16593.50	8881.90	800			26275.20
Hardware Outlet (Supplies)	771681	8428.73	2624			18769.54
BattleCo (Construction)	51898.96	58683.96	9606			120188.92
General Trading Co (Supplies)	389532	642553	940			11260.65
Miscellaneous Co's (Supplies)	7710.17	8897.70	500			17107.87
Lynn Ladd (Scaffolding)	42790	57638	80			1054.20
Filippone & Son (Construction)	246834	2240.00	—			470834
P J Spillane Co (Construction)	2600704	—	—			2600704
MARAScaffolding (Scaffolding)	159917	—	—			159917
Insulco (Construction)	235777	242393	—			478170
A Mascalolo (Painting)	—	8600.00	—			8600.00
Lives by Wins (Painting)	—	875.00	900			1775.00
First Franklin (Groundscrew Staff)	22500.00	22500.00	3750			48750.00
Metropolitan Insurance (Security)	50431.37	41154.02	4800			96385.39
Technical Analysts Inc (Engineering)	604000	—	12000			1804000
PICPA & Associates (Engineering)	150000	—	—			150000
Building Concepts Inc (Construction)	2855.00	—	—			2855.00
	246743.00	256428.60	47000			504171.60

COMMONWEALTH OF MASSACHUSETTS
BOSTON REDEVELOPMENT AUTHORITY

IN RE: CHAPTER 121A)
APPLICATION OF POST OFFICE)
SQUARE REDEVELOPMENT CORP.)

)

AFFIDAVIT OF STEPHEN LALLY

Now comes Stephen Lally, who after having been duly deposed and sworn on oath, states as follows:

1. My name is Stephen Lally. I reside at 93 Hampton Circle, Hull, Massachusetts.

2. I am the Supervisor of the Building Maintenance division for the Brattle Company, which manages certain properties including the Post Office Square Garage. I have been employed in this position since 1974.

3. Part of my responsibility includes the supervision of work performed on the garage including that performed by Frank Presto, a general contractor with offices in Revere, Massachusetts, and William Larson, an independent electrical contractor, both employed by First Franklin Corp., lessee of said garage.

4. The following maintenance, upgrading and repair has been performed at the Post Office Square Garage during 1984, 1985 and 1986 or, as indicated, is now being performed, either by my general maintenance crew, the Frank Presto Construction Co. and/or William Larson, and/or Spillane Construction Co.

- a. Limestone Ashlar panels have been replaced, re-hung and rejoined to assure that there is no possibility of their coming loose. Pereaets have been recapped and plastered and made water tight, and exterior panels have been repaired and the window frames and sills repainted where necessary.
- b. The first floor ceiling has had all loose and spalled concrete removed by chipping or jackhammering. Repair of the first floor ceiling is ongoing.
- c. The basement ceiling has had loose or spalled concrete removed by chipping or jackhammering. Patching of this concrete is ongoing.
- d. Ceilings are checked daily for spalled concrete.
- e. All potholes have been repaired by patching. Surface loose concrete has been removed and patched or jackhammered and new concrete installed.
- f. Over 100 new two-light eight foot lighting fixtures have been installed. These have been placed in bathrooms, stairwells, on the roof and in the garage proper. Other lighting fixtures have been repaired.
- g. A monthly lighting inspection of the entire property is conducted by Bill Larson, a licensed electrician and electrical contractor.
- h. Windows are being repaired and replaced as needed.
- i. All debris at all levels has been removed and hauled away including sand, rags, cans, trash and other waste. Bi-weekly clean up of the property takes place.

- j. The building exterior has been cleared and landscaped including the planting of shrubbery and the installation of nautical chain fence.
- k. Vandalism is repaired as it occurs, including repair of broken windows, window frames, locks, hinges, door knobs and stair railings.
- l. Rest rooms have had doors repaired, and partitions, sinks, fixtures, tile, glass and radiators repaired or replaced.
- m. Broken stair treads have been jackhammered to solid concrete and repoured and finished.
- n. Overhead duct work is being rehung.
- o. Portions of the basement ventilation trunk have been replaced. The rest of the ventilation system is currently being repaired.
- p. Heaters in bathrooms and attendant booths have been repaired.
- q. Re-wiring has included installation of separate panels and relays to control circuits. New circuits and outlets have been added. Terrace lighting has been rewired. Flood lighting of attendant booths has been installed. Exit and entrance lights have been replaced. Outside lights have been replaced.
- r. All drains have been snaked, flushed and cleaned of sand, paper, cans and other debris. Broken end caps have been replaced. Broken floor drain grates were replaced on an

emergency basis.

s. All pumps have been cleared of silt, sand and sludge.

t. All water line and drains are maintained and winterized. New pumps have been installed.

u. The water system has been winterized, including the closing off of the water supply, opening of all valves and blowing down all levels of the garage.

v. The heating system has also been winterized including the cleaning of the tubes, full purge of the systems and check for leaks.

w. The area in which seepage has damaged the electrical panel boxes has been repaired.

x. Attendant booths have been repaired.

y. New ejector pumps have been installed and wired.

z. Poles have been painted and are being lettered for ease in identifying sections of the garage.

aa. Other areas of the garage have been power washed and all of the first floor has been painted. The garage premises are broom clean.

bb. Parking lines have been repainted once and are to be repainted in the coming weeks.

cc. A private security service has been retained to patrol the property daily from 3:00 p.m. to 4:00 a.m., and on weekends and holidays 24 hours a day.. Guards escort patrons to their cars upon request and transients and vandals no longer

have access to the property.

Signed under the pains and penalties of perjury this
23rd day of January, 1986.

Stephen J Lally
Stephen Lally

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

JANUARY 23, 1986

Then personally appeared the above-named Stephen Lally, who after having been duly sworn on oath, stated that he had read the foregoing affidavit and that the facts contained therein are true, before me,

Robert M. Lally
Notary Public
My Commission Expires

April 10, 1992
Date



FEB 3 1986

Suite 24
92 High Street
Medford, MA 02155
Telephone: (617) 395-2266
Telecopier: (617) 395-6963
Telex: 6502679136

February 3, 1986

Walter H. McLaughlin, Esq.
Gilman, McLaughlin & Hanrahan
470 Atlantic Avenue 11th Floor
Boston, Massachusetts 02210

Dear Attorney McLaughlin:

We are pleased to submit this report on the current condition of the City of Boston Unit 3 Parking Garage located in Post Office Square. We previously reported on the condition of this garage as of December 1983 in a report dated January 17, 1984. The garage was found to be "...presently safe and structurally adequate for use as a parking garage" although the first and second floor slabs were found to be deteriorated. In addition, deterioration was found in the exterior facade panels and the roof parapet. Repair procedures were recommended that were designed to "...render the garage fully capable of continued safe and satisfactory service for the foreseeable future."

A second report authorized by Simpson Gumpertz & Heger Inc. (hereinafter SGH) in March 1984 also discussed the condition of the garage. In general, this report confirmed our findings as to the condition indicating that there was deterioration of the first and second floor slabs as well as facade deterioration. The report reached the following principal conclusions:

1. The first and second floor slab ribs were deteriorated as were the tops of these slabs. SGH stated that "The observed deterioration in the ribs and at the top surface of the floors is so extensive as to cause concern about the structural adequacy of the existing floors in the deteriorated areas."
2. There was deterioration around the column bases the "... has already caused some reduction in column strength, but probably is not yet a structural safety problem."
3. The anchors on some of the exterior panels have corroded causing local spalling of concrete.
4. Local regions in the ramps show cracks, spalling and some reinforcement corrosion.
5. The "...major deterioration of the parapets around the perimeter of the roof" was observed.

The SGH report recommended numerous repair procedures to correct these problems.

During the past two years the garage operator has undertaken an extensive maintenance program to correct many of the deficiencies noted by SGH. The repairs and their effects are as follows.

1. Cast stone copings at top of perimeter wall parapet have been repositioned where necessary, repointed and/or caulked. This addressed the fifth SGH conclusions.
2. Inside face of parapet wall has been parged with a cementitious coating. Again, this helped to correct the concern in the fifth conclusion.
3. Roofing cement has been applied to areas of torn flashing at the interior base of parapet wall. Again, this helped to correct the fifth concern.
4. Spalled concrete at metal exterior wall panel connections has been patched. These repairs addressed the third SGH conclusion.
5. The damaged exterior canopy on the Pearl Street side of the garage has been repaired.
6. Stair handrail connections have been re-anchored to supporting walls.
7. New lighting has been installed.
8. Additional bituminous patching has been done on the first and second floor slabs to replace deteriorated concrete.
9. Loose and spalled concrete has been removed on an as-needed basis.

While this maintenance program has improved the condition of the garage structure, no rehabilitation of the first and second floor slab has been undertaken.

The SGH report raised the question of the structural adequacy of the two slabs. We have performed a load test on a portion of the second floor slab to determine whether the slab load capacity meets the present state code requirement of 50 pounds per square foot (psf). The test was run on the second floor slab which had the lowest initial design live load (100 psf vs. 150 psf for the first floor slab) and exhibited the most severe deterioration of the underside and top surface. In theory this area should represent the weakest area of the slab. The slab was loaded to 92 psf with no visible indication of failure at any point during the test.

Walter H. McLaughlin, Esq.
February 3, 1986
Page Three

The test results would appear to remove an immediate concern over the structural adequacy of the slabs in question. It appears that even with the deterioration noted, which is extensive, the initial high design parameters have resulted in a structure which still has a load capacity in excess of current state design requirements. We recommend in our earlier report that repairs be made to the slabs in accord with procedures described therein. This work is still required to reverse the deterioration that has occurred and thereby extend the useful life of the garage well into the future. On-going repairs to the exterior facade will be necessary to maintain the structure in good condition. We recommend that the existing maintenance program be continued and expanded to include the recommended repairs to the slabs.

Attached to this report is a copy of our load test report dated January 22, 1986 and also our report of January 17, 1984 which sets out our recommended repair procedures. We appreciate the opportunity to have been of service to you in this matter.

Very truly yours,

James C. Jones
James C. Jones

JCJ/bac

Encl.

JAN 29 1986

*Chapin Associates, Inc.*Structural Engineers
106 Access Road - Norwood, MassachusettsArthur F. Chapin, P.E.
Edward J. LeNormand, P.E.
Warren W. WoodfordTelephone 762-0559
Area Code 617R E P O R T
O F
L O A D T E S TC I T Y O F B O S T O N
U N I T N O. 3
P A R K I N G G A R A G E
P O S T O F F I C E S Q U A R E
B O S T O N, M A S S.

JANUARY 22, 1986

T A B L E - O F C O N T E N T S

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Description of Load Test	
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APPENDIX NO. 1

Slab deflection readings

INTRODUCTION

In accordance with our proposal dated January 17, 1986 and your authorization to proceed, we have, with submission of this report, completed our work in connection with load testing at the City of Boston Unit No. 3 Parking Garage.

This report specifically incorporates a description of the test procedure and a summary of the results.

DESCRIPTION OF LOAD TEST

A. LOCATION

As shown in Fig. 1, the area chosen for the test is a section of the Second Floor (one level above street grade) consisting of four adjacent bays: two in each direction. Thus, the loaded area forms a rectangle 2 bays wide and 2 bays long, having a column at each corner and mid-way along each side, as well as a single column in the exact center.

This specific location chosen was selected because it was considered to represent the most suspect area, considering both original design load and present condition. Since the Second Floor has the smallest initial design live load (100 p.s.f. vs. 150 p.s.f. at First Floor and 130 p.s.f. at Roof Level), it has the lowest capacity to resist applied load. In addition, this particular area of Second Floor slab was judged to be among those which have, visually, the most severe deterioration. There is significant spalling of concrete from ribs at the underside, and the top surface, judged by soundings, seems to have the most severe delamination around the columns, particularly the center column.

The objective of the test was to induce maximum negative moment at a column showing severe delamination, the center column in this case, and to induce maximum positive moment in the bays surrounding this middle column, where spalling and deterioration of bottom steel was evident.

The dimensions between the centerline of columns at the corners of the loaded area are 58'-0" x 68'-0". The load was applied to an area bounded by these columns whose actual size was 55'-0" x 65'-0".

Chapin Associates, Inc.

B. LOAD APPLICATIONS:

For a variety of reasons, water was selected as the load medium. A wood stud wall 2'-0" high was built, braced, and anchored to create a basin which was then lined with 6 mil polyethylene sheet; joints taped to prevent seepage. (See Fig. 2.)

Temporary shoring was installed down to the basement floor to prevent total collapse in the event of failure. This shoring had a capacity to support 75 percent of the combined weight of Second Floor slab and full test load. It was installed tight between basement and First Floor, but was held down a few inches below underside of Second Floor slab to allow for anticipated deflection under test load.

The basin was filled with water in approximately 5 inch increments to an average depth of 10 inches, at which point load was added at reduced increments of water height until an average depth of 17 3/4 inches was reached. (See Fig. 3.) This represents an applied load applied load of 329,973. pounds, which is slightly above 92 pounds per square foot. This figure is almost twice the 50. p.s.f. design live load required by the Commonwealth of Massachusetts - State Building Code - 4th Edition, now in effect. Slab deflection readings at 8 mid-span locations in loaded bays were taken at each increment of added load.

RESULTS OF LOAD TEST

Deflection readings at underside of loaded slab are presented in Fig. 4.

CONCLUSION AND DISCUSSION

The slab showed no visible indication of failure at any point during the test, either by apparent cracking or any other visible or audible signs, or by evaluation of deflection readings taken at intervals during the load application. In fact, deflection readings were significantly lower than would be yielded by calculations based on slab flexure theory. The reason for this may be that the slab, due to the rather massive columns, column capitals, and drop panels, is behaving more like a shallow arch than a flexural member.

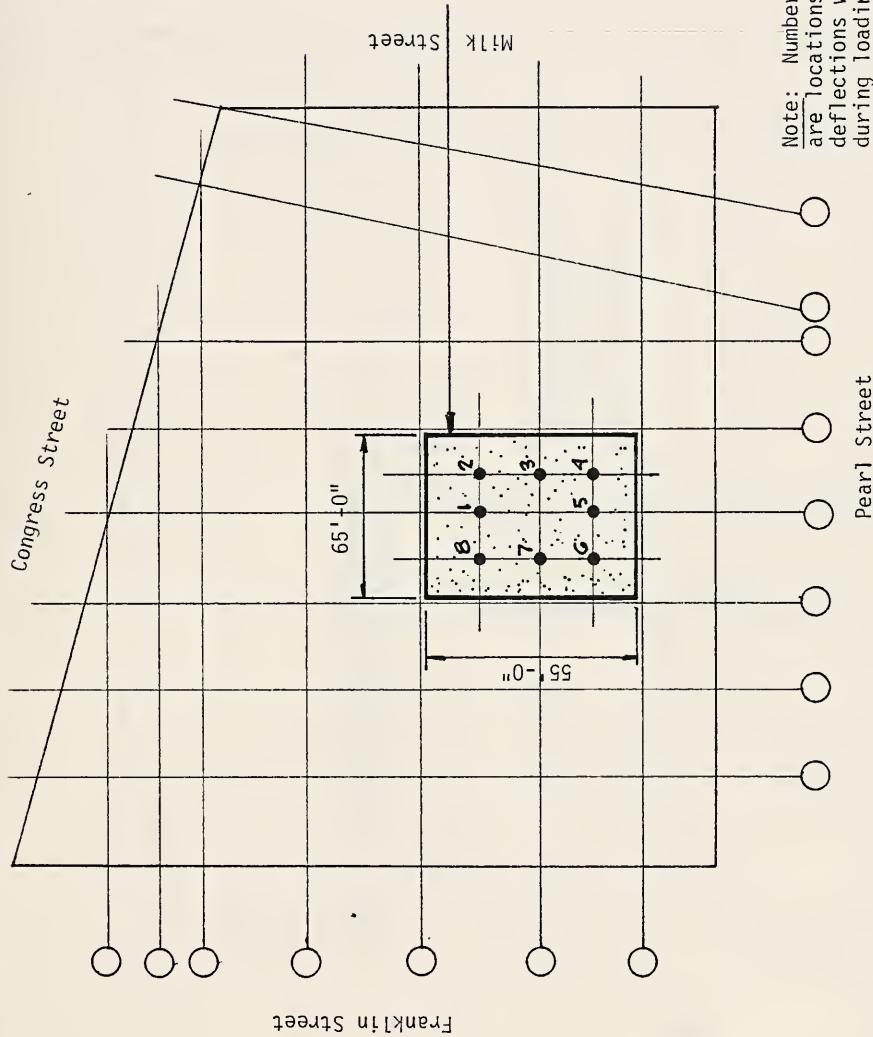


Figure 1.

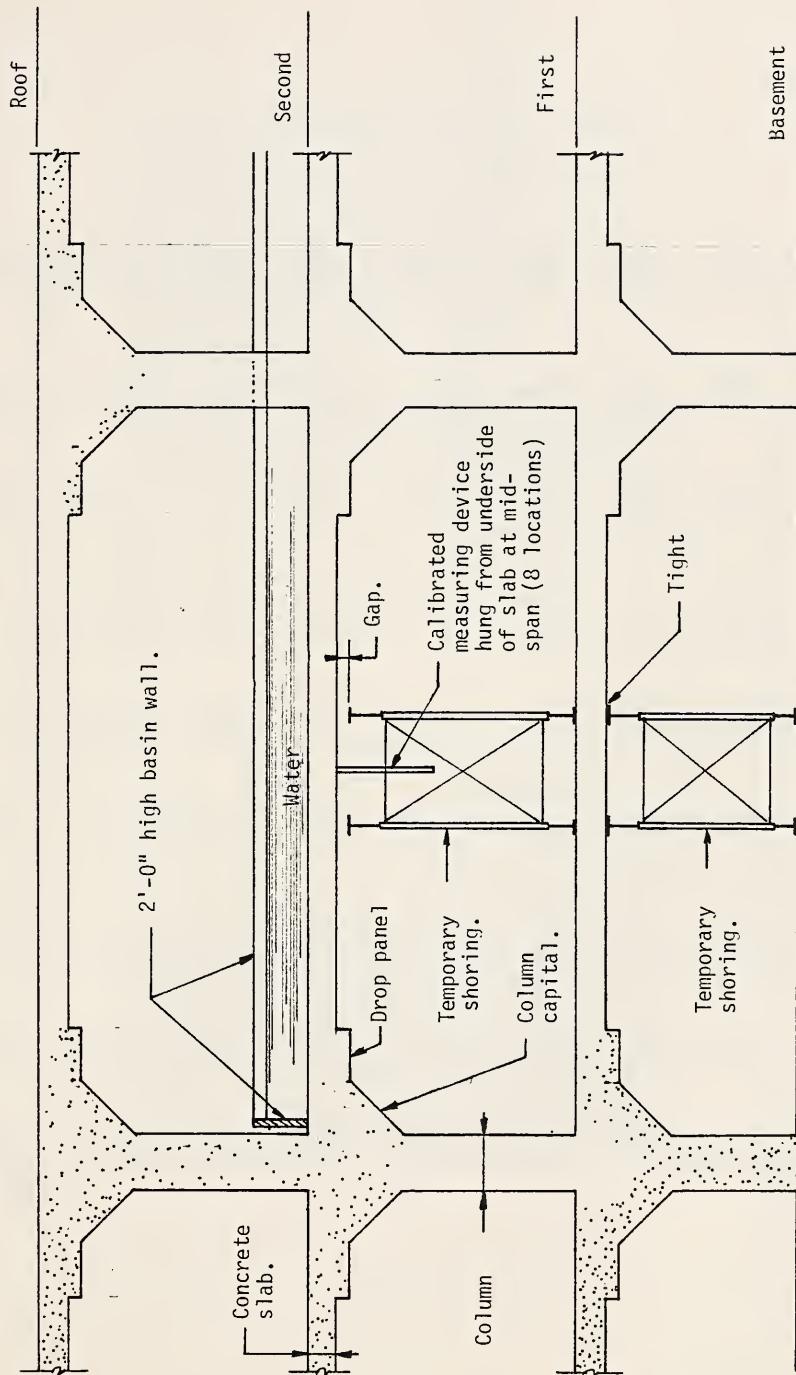
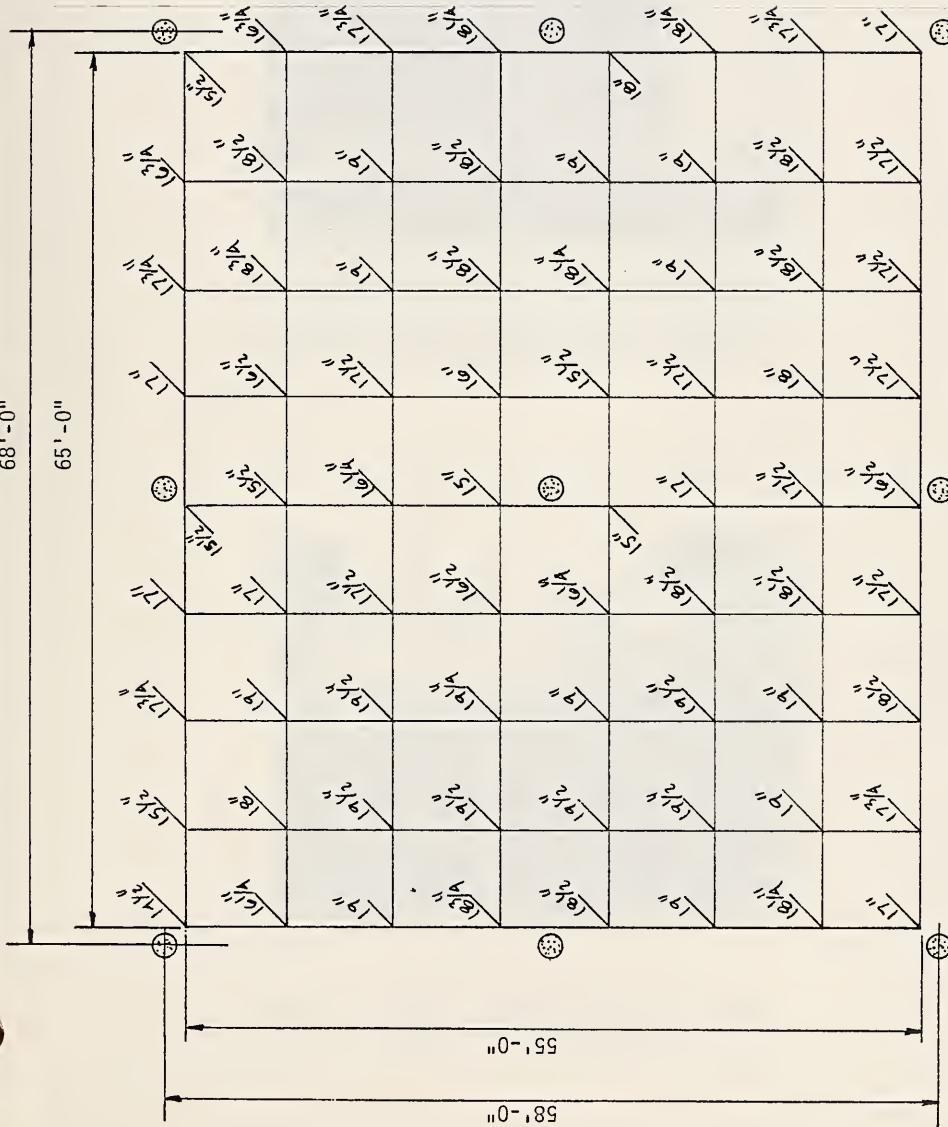


Figure 2.

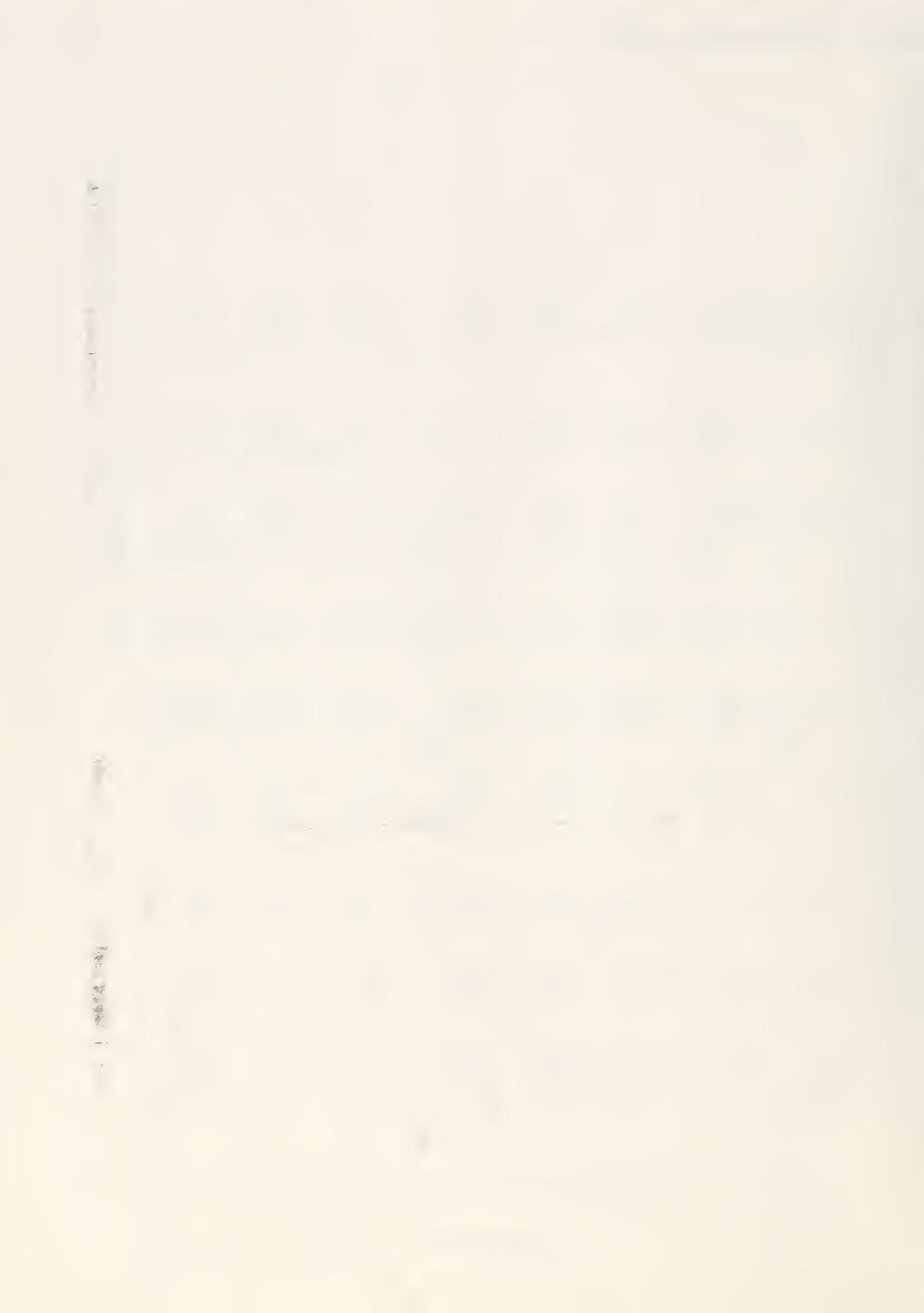


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↑



Figures given are maximum depths of water at that location (Average = 17 3/4")

Note:



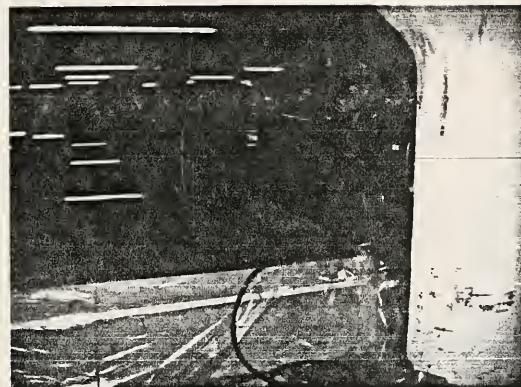


Figure 4: View of basin showing polyethylene liner and stud wall.

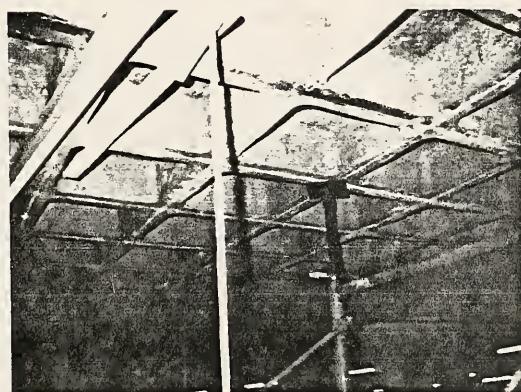


Figure 5: View of measuring device and temporary shore below test area.

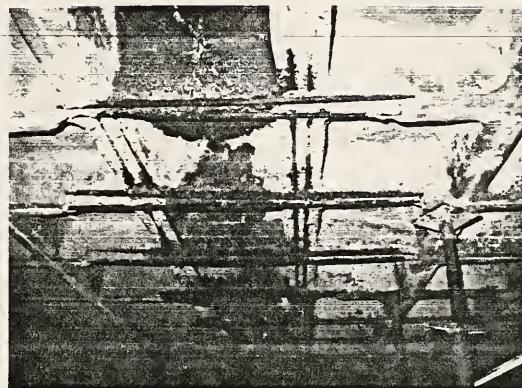


Figure 6: View of underside of slab in tested area showing spalled concrete.

Chapin Associates, Inc.

APPENDIX NO. 1

SLAB DEFLECTIONS

By:

BOSTON SURVEY CONSULTANTS

FIELD SHEET

BSC

PROJECT NO 1-1678.00
SUBJECTPARTY B. BAierski
D. Howard

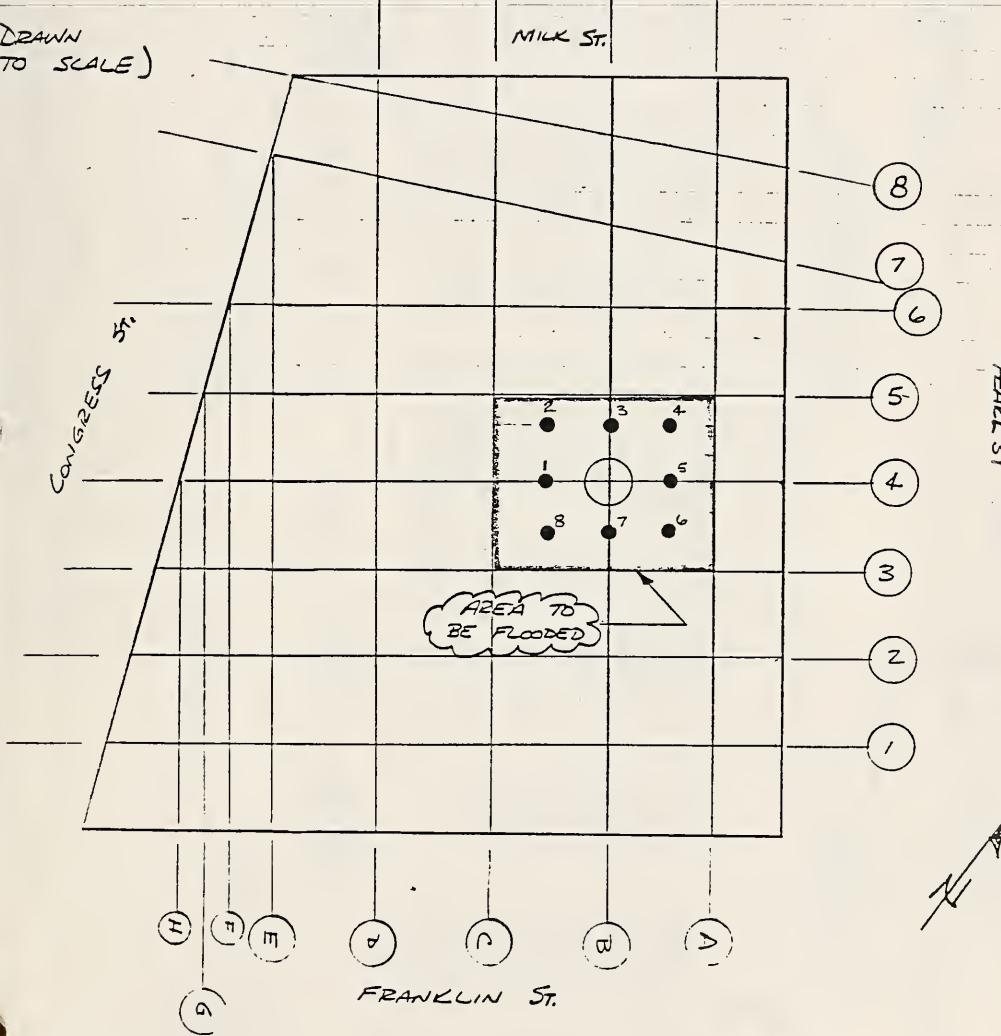
REFER TO

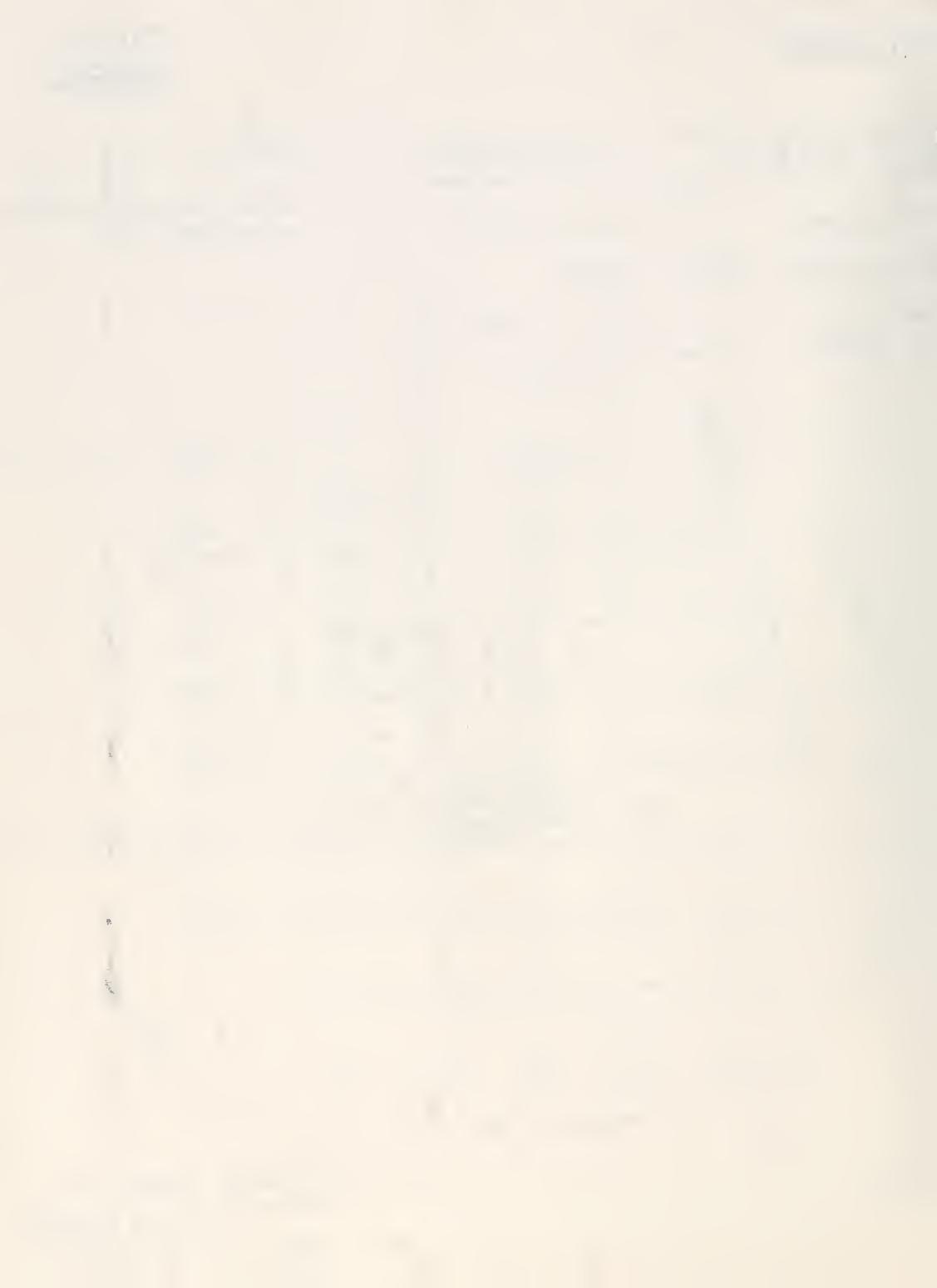
LOCATION BOSTON

DATE 1-18-86

EQUIPMENT WILD LEVEL #3, 15' B.D.
WEATHER CLEAR 45°

APPROXIMATE COLUMN LINES

DRAWN
TO SCALENOTES REDUCED
NOTES CHECKED
NOTES PLOTTEDAPPROXIMATE LOCATE OF
HANGING RULESFIELD
SHEET 2 OF 3 SHEETSCS 6 ~~CS~~



PROJECT NO. 1-1678.00 SHEET NO. 1 OF 5

Prepared By:
Boston Survey Consultants

Prepared By:

Dwight

Shared Ears: CINBIV

Prepared For: CHAPIN ASSOCIATES INC.

POINT NO. 1 SEE SKETCH CS 6
DESCRIPTION 6' RULER HANGING FROM CEILING
LOCATION BOSTON
ESTIMATED ACCURACY OF OBS'N \pm 002 ET

POINT NO. 2
DESCRIPTION 6' RULER HANGING
LOCATION BOSTON
ESTIMATED ACCURACY OF OBS'N 0.02
SEE SKETCH FROM CELLINE
C.S.C. FT

DATE	REF	ELEV	DEVIATION PREVIOUS ELEV	FROM INITIAL ELEV	REMARKS	DATE	REF	ELEV	DEVIATION PREVIOUS ELEV	FROM INITIAL ELEV	REMARKS
1-18-86	FS 4	105.175	—	—	CONTROL	1-18	FS 4	105.030	—	—	CONTROL
1-21	FS 6	105.185	0.010 ✓	0.010 ✓	5" OF WATER 10-12" (NOSE)	1-21	FS 6	105.040	0.010 ✓	0.010 ✓	5" 9:30 AM
1-21	FS 7	105.180	0.005 ✓	0.005 ✓	10-12" WATER	1-21	FS 7	105.030	0.010 ✓	0.000 ✓	10-12" NOON
1-21	FS 8	105.185	0.005 ✓	0.010 ✓	10-12" 12:30-1:00 PM	1-21	FS 8	105.035	0.005 ✓	0.005 ✓	10-12" 1:00 PM
1-21	FS 9	105.180	0.005 ✓	0.005 ✓	14 1/4" 2:00 PM	1-21	FS 9	105.030	0.005 ✓	0.000 ✓	14 1/4" 2:00 PM
1-21	FS 10	105.180	0.000 ✓	0.000 ✓	16" 3:00 PM	1-21	FS 10	105.030	0.000 ✓	0.000 ✓	16" 3:00 PM
1-21	FS 11	105.185	0.005 ✓	0.010 ✓	18" 4:30 PM	1-21	FS 11	105.030	0.000 ✓	0.000 ✓	18" 4:30 PM
1-21	FS 12	105.185	0.000 ✓	0.010 ✓	19" 5:30 PM	1-21	FS 12	105.030	0.000 ✓	0.000 ✓	19" 5:30 PM
1-21	FS 13	105.180	0.005 ✓	0.005 ✓	19" 6:00 PM	1-21	FS 13	105.030	0.000 ✓	0.000 ✓	19" 6:00 PM

ABBREVIATIONS:

卷之三

S = CALCULATION

SHEET ELEVEN

DATUM: 1 AUGUSTUS 1955

20

CALC'S: B. BAIEZSKI
TRIANGULATION: D. RAY 1/22/86
CIRCUIT: A. RAY 1/22/86

A circular library stamp with a decorative border. The text "COMMONWEALTH OF MASSACHUSETTS" is at the top, "STEPHEN E. SPRINGER" is in the center, "No. 31728" is below it, and "PROFESSIONAL LIBRARY" is at the bottom. The outer ring contains the words "STATE LIBRARY" and "BOSTON, MASSACHUSETTS".

John B. Deacon

PROJECT NO. 1-1678.00

Prepared By:
Boston Survey Consultants

Prepared for: CHAPIN ASSOC. INC.

POINT NO.	3	SEE SKETCH	CS 6
DESCRIPTION	6' RULE		
LOCATION	BOSTON		ET
ESTIMATED ACCURACY OF OBS'N + 0.02			

POINT NO. 4
DESCRIPTION 6' RULER
LOCATION BOSTON
ESTIMATED ACCURACY OF OBS'N ± 0.02
SEE SKETCH CS 6
FT

DATE	REF	ELEV	DEVIATION PREVIOUS ELEV	DEVIATION FROM INITIAL ELEV	REMARKS	DATE	REF	ELEV	DEVIATION PREVIOUS ELEV	DEVIATION FROM INITIAL ELEV	REMARKS
1-18	FS 4	105.040	—	—	CONTROL	1-18	FS 4	105.040	—	—	CONTROL
1-21	FS 6	105.050	0.010 /	0.010 /	5" 9:30 AM	1-21	FS 6	105.050	0.010 /	0.010 /	5" 9:30 AM
1-21	FS 7	105.045	0.005 /	0.005 /	10-12" NOON	1-21	FS 7	105.045	0.005 /	0.005 /	10-12" NOON
1-21	FS 8	105.045	0.000 /	0.005 /	10-12" 12:30:00 PM	1-21	FS 8	105.045	0.000 /	0.005 /	10-12" 12:30:00 PM
1-21	FS 9	105.045	0.000 /	0.005 /	14-14" 2:00 PM	1-21	FS 9	105.045	0.000 /	0.005 /	14-14" 2:00 PM
1-21	FS 10	105.040	0.005 /	0.000 /	16" 3:00 PM	1-21	FS 10	105.040	0.005 /	0.000 /	16" 3:00 PM
1-21	FS 11	105.045	0.005 /	0.005 /	18" 4:30 PM	1-21	FS 11	105.050	0.010 /	0.010 /	18" 4:30 PM
1-21	FS 12	105.045	0.000 /	0.005 /	19" 5:30 PM	1-21	FS 12	105.045	0.005 /	0.005 /	19" 5:30 PM
1-21	FS 13	105.045	0.000 /	0.005 /	19" 6:00 PM	1-21	FS 13	105.045	0.000 /	0.005 /	19" 6:00 PM

ABBREVIATIONS: CS = CALCULATION SHEET
FS = FIELD SHEET
FIEV = ELEVATION MEASUREMENT

DATUM: / ASSUMED



CALC'S 1 B. BAER SK
TABULATION: D. RAP
S. HECT'S



PROJECT NO. 1-1678.00

Prepared By:
Boston Survey Consultants

SHEET NO. 3 OF 5

Prepared For: CHAPIN

Prepared For: CHI API N ASSOC. INC.

POINT NO. 5	SEE SKETCH CS 6	POINT NO. 6	SEE SKETCH CS 6
DESCRIPTION 6' RULER		DESCRIPTION 6' RULER	
LOCATION BOSTON		LOCATION BOSTON	
ESTIMATED ACCURACY OF OBS'N ± 0.02		ESTIMATED ACCURACY OF OBS'N ± 0.02	
		FT	FT

DATE	REF	ELEV	DEVIATION		FROM INITIAL ELEV	REMARKS	DATE	REF	ELEV	DEVIATION	FROM INITIAL ELEV	REMARKS
			PREVIOUS ELEV	INITIAL ELEV								
1-18	FS4	105.165	-	-	control	5" 9:30 am	1-18	F34	105.020	-	-	control
1-21	FS6	105.170	0.005/	0.005/	0.000/	10-12" Noon	1-21	FS4	105.025	0.005/	0.005/	5" 9:30 am
1-21	FS7	105.165	0.005/	0.005/	0.000/	10-12" 12:30- 1:00 PM	1-21	FS7	105.015	0.010/	0.005/	0-2" Noon
1-21	FS8	105.170	0.005/	0.005/	0.000/	14 1/4" 2:00 AM	1-21	FS8	105.025	0.010/	0.005/	12:30- 1:00 PM
1-21	FS9	105.170	0.000/	0.000/	0.000/	16" 3:00 PM	1-21	FS9	105.015	0.010/	0.005/	14 3/4" 2:00 PM
1-21	FS10	105.170	0.000/	0.000/	0.005/	18" 4:30 PM	1-21	FS10	105.020	0.005/	0.000/	16" 3:00 PM
1-21	FS11	105.170	0.000/	0.000/	0.005/	19" 5:30 PM	1-21	FS11	105.020	0.000/	0.000/	18" 4:30 PM
1-21	FS12	105.175	0.005/	0.005/	0.010/	19" 6:00 PM	1-21	FS12	105.025	0.005/	0.005/	19" 5:30 PM
1-21	FS13	105.170	0.000/	0.000/	0.005/	19" 6:00 PM	1-21	FS13	105.020	0.005/	0.000/	19" 6:00 PM

ABBREVIATIONS: CS = CALCULATION SHEET
FS = FIELD SHEET
ELEV = ELEVATION MEASUREMENT

DATUM: ASSUMED

CALC'S B. BALEVSKI
TABULATION: D.RAH 1-22-B6
Scherzer



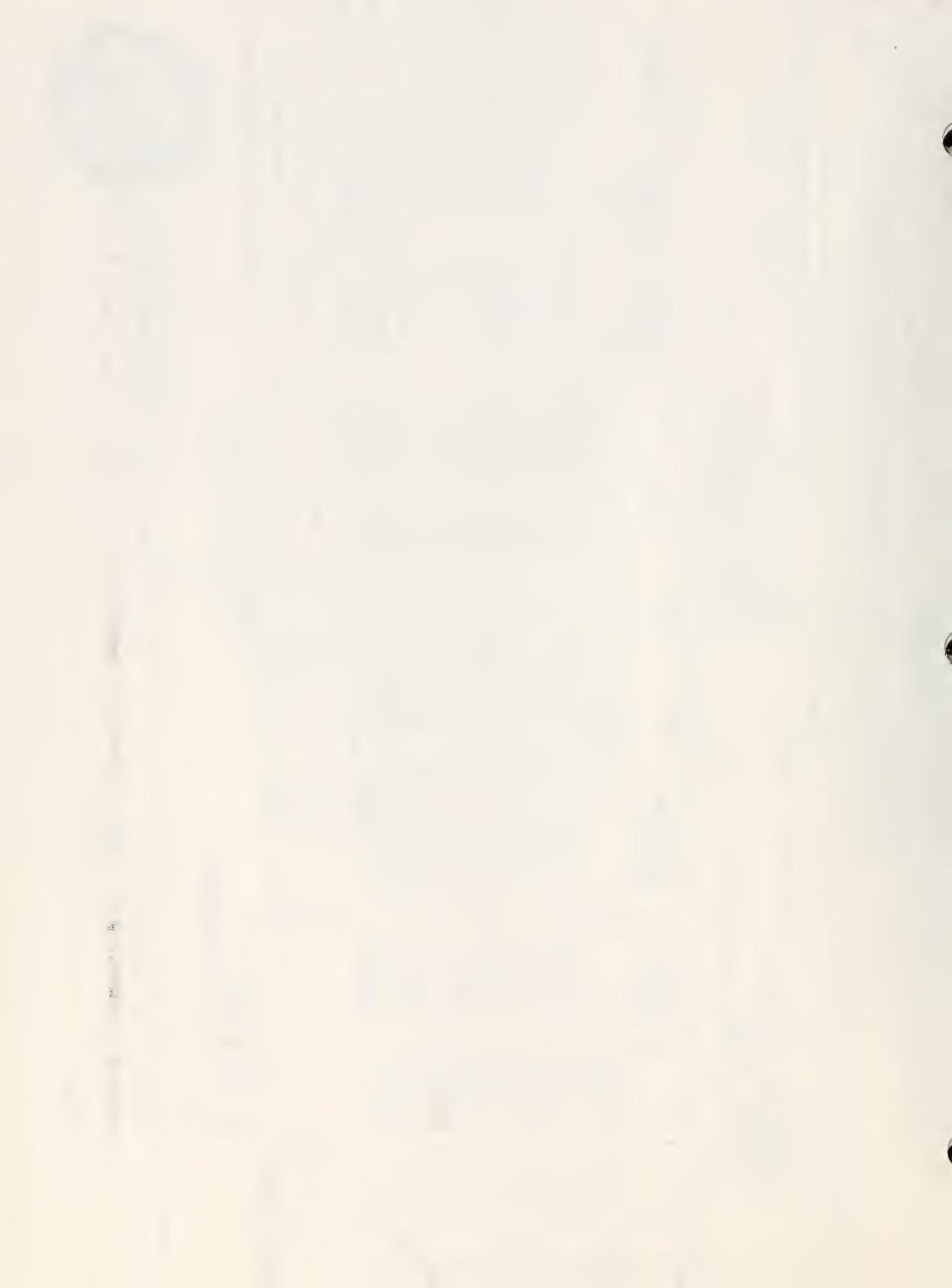




EXHIBIT IV-F
(photos)





PART V
SECTION IN OPPOSITION TO THE
AMENDMENT TO THE APPLICATION

INTRODUCTION

The purpose of this Section is to address and oppose the changes which are contained in the Amendment to the Application in the above-entitled matter and indicate where and how the Amendments are not in compliance with law and further how they conclusively deprive the Boston Redevelopment Authority of the ability to make the statutory findings required for approval of the Application.

ARGUMENT

At the outset, it is important to review what the statutes and Regulations require to be filed with an Application for Approval to form a 121A Redevelopment Corporation. Chapter 121A, as amended and St. 1960, Chapter 652, as amended, section 13 states that the Application shall contain:

"...in general terms, a description of the building, structures or facilities which it is proposed to furnish and shall be accompanied by a site plan and drawings of the proposed buildings and other improvements adequate to show the nature and extent of the project."

Further, the law requires the BRA to:

"...make and embody in its report reasonable rules and regulations setting minimum standards for the financing, construction, maintenance and management of such project in so far as the same are not specified in the Application for Approval thereof."

In the furtherence of the statutory authority, the BRA

adopted Rules and Regulations and these Regulations, in more detail, delineate the obligations of an Applicant to file certain basic information with their Application. For instance, with regard to plans, Rule 2, Sub-paragraph B requires certain basic documentation and Rule 2, Paragraph C Appendix to Application Sub-paragraph 3 states as follows:

"Drawings -- drawings of the building(s) to include a plan of a typical floor, a plan of the ground floor, an elevation of the Project in relation to the surrounding area. These drawings may be of any appropriate scale that is both legible, and that can be folded and bound into the 8 1/2 x 11" application format."

The BRA Regulations, Rule 2, Sub-paragraph D, Other Documents To Accompany Application, Paragraphs 1, 2 and 3 state as follows:

"(1) Architectural and Design Exhibits. Building plans, elevations and sections showing organization of functions and spaces. These drawings should indicate the general architectural character and proposed finish materials. In addition, plans of each living unit shall be shown at 1/4" = 1' for applicable projects.

(2) Site Plan. Site plan at an appropriate scale emphasizing general relationship of proposed and existing buildings, walks, and open spaces, including that mutually defined by buildings on adjacent parcels and across streets. The general location of walks, driveways, parking, service areas, roads and major landscape features in addition to the buildings shall be shown. Pedestrial and vehicular flow through the parcel and to adjacent areas shall be shown. Where relevant, site sections showing height relationships with proposed and adjacent buildings shall be provided. All dimensions which may become critical from the point of view of zoning shall be indicated.

(3) Outline Specifications. Outline specifications indicating the character and quality of the construction to be employed."

With respect to financing, the BRA Regulations, Rule 2, Paragraph 4(b) requires of the Applicant as follows:

"Method of Financing. The Applicant shall set forth the minimum cost of the project and a description in reasonable detail of the amounts, terms and conditions of construction and permanent financing. Documents evidencing financial feasibility are required to be in the Appendix Section of the Application....This statement shall include as follows:

(i) If the project is to be undertaken by a corporation, a description of the proposed corporate structure;

(ii) The amount proposed to be raised by mortgage financing and the lending institution to which the application for financing has been made;

(iii) All amounts to be contributed to equity capital and by whom;

(iv) All other amounts to be raised, in what manner, and so far as known, from whom;

(v) The amounts of stock or other securities of a corporation, in any, or shares or other financial interest in a joint venture, partnership, limited partnership, or trust, in any, to be issued, created or transferred in payment for services, together with a description of such services and a statement of the value thereof;

(vi) A listing of all persons, natural and corporate who have, or prior to the completion of the project and will have, directly or indirectly, any beneficial interest in the project."

The Regulations further provide in Rule 2(D)(5)(c) as follows:

"If Conventional financing is being used, the Applicant must include a copy of a letter from a recognized lender setting forth the terms and conditions of financing."

It is obvious why, at a minimum, the law and the Regulations require the foregoing basic information to be submitted with the Application. Under the statutory scheme, the BRA must make the following findings:

- (i) Whether the project will be practicable;
- (ii) Whether such project conflicts with the Master Plan for the City;
- (iii) Whether such project would be detrimental in any way to the best interest of the public or the City;
- (iv) Whether such project would be detrimental to the public safety and convenience or inconsistent with suitable development for the City;
- (v) Whether the project will constitute a public use and benefit. St. 1960 c. 652 §13.

Based upon the Amendment, it is impossible for the BRA to make its statutory findings. The Board's attention is invited to Exhibit A of the First Amendment entitled "Development Agreement" and initially to Article II appearing on page 8 of the Development Agreement. The Applicants have not settled on the program for their project. They suggest a committee will be formed to study the site, urban parks and parking garages and development programs. Without knowing what they intend to do, the BRA cannot make the several statutory findings referenced above. The Amendment, with its Development

the present paper, we will focus on the first two.

The first approach is to use a model of the system, and then to use the model to predict the system's behavior.

The second approach is to use a model of the system, and then to use the model to predict the system's behavior.

The third approach is to use a model of the system, and then to use the model to predict the system's behavior.

The fourth approach is to use a model of the system, and then to use the model to predict the system's behavior.

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The ninth approach is to use a model of the system, and then to use the model to predict the system's behavior.

The tenth approach is to use a model of the system, and then to use the model to predict the system's behavior.

The eleventh approach is to use a model of the system, and then to use the model to predict the system's behavior.

The twelfth approach is to use a model of the system, and then to use the model to predict the system's behavior.

The thirteenth approach is to use a model of the system, and then to use the model to predict the system's behavior.

The fourteenth approach is to use a model of the system, and then to use the model to predict the system's behavior.

Agreement, envisions a scheme whereby after the program is settled upon, it does NOT come back to the BRA Board of Directors for approval. A fortiori there is no further public hearing whereby First Franklin, or any other opponent, can produce any evidence in opposition to their intended project or preserve a record for judicial review. Instead, by operation of the Development Agreement and particularly paragraph 11.1, any further approval of the Authority shall be conclusively deemed given if received from the Director of the Authority.

The Applicants' approach, to sneak by their ultimate design, is much the same as their program. Again, a new design will be settled upon and approved by the Director of the BRA behind closed doors.

The Board's attention is invited to Article III of Exhibit A (the Development Agreement) entitled "Temporary Transportation Management Program". Even the most casual visitor to downtown Boston during the business week is poignantly aware of the lack of available parking spaces. The insufficient supply of parking spaces has been the subject of comment in the media and by numerous governmental agencies. The BRA itself has conducted a study and determined there is a shortfall of approximately 20,000 parking spaces in Boston.

Attached to this Memorandum, marked Exhibit "V-A", is a listing of garages and parking lots no longer in existence which indicates 3,365 parking spaces have disappeared and an additional 800 parking spaces are slated to be gone in the near

future. At the public hearing, counsel for the Applicant, Mr. White, admitted his clients had no alternative parking plan for the construction period, but would try to put one together.

"MR. WHITE: I think the initial thoughts were X number of people who parked in the garage on a given day. The garage will be closed. There has to be someplace to put them. Then as the discussion went by, it became clear finding another parking lot somewhere and saying to these people, 'You can go park here,' it may not be quite the best way to do it because the impact of the neighborhood where the facility might be placed. We are supposed to present -- we haven't yet -- a plan which may say, 'There's some other way to providing help for the people who used to park in this garage by providing access through the system, so that's --

MR. WALSH: So the amendment really involves your presenting a more detailed solution to the problem?

MR. WHITE: If we can find one, yes . . ."

T. V. III at 25-26.

They made that promise two years ago and yet, proffer no alternative parking plans with the Amended Application. As pointed out in Section III, concerning the issue of fundamental change, the entire section 3 of the Development Agreement is a total sham and utter fluff. Any alternative parking plan the Applicants may devise in the future must be such that it does not cost money to implement or they can abandon it with the approval of the City which approval cannot be unreasonably withheld.

First Franklin asks the Board to bear in mind the Applicants seek to eliminate \$4.85 a day parking with market rate parking now at \$16.00 per day and soon to be \$20.00 per

day. Worse yet, during a construction period, estimated to be two years, ten months, 950 parking spaces [plus the on-street metered spaces surrounding the existing garage] will be removed from the very heart of Boston's financial district. The undersigned asks the Board to remember that in order to approve the Application, the Board must consider whether the project will be in any way detrimental to the best interest of the public or the City or to the public safety and convenience. How can the BRA make those findings when it does not know the program, the design and now what horrendous traffic and parking disasters will befall the City by whatever the Applicants may propose in the future?

Recognizing that the BRA does not have the facts and evidence before them to make such a decision, the Applicants' solution is simple. They propose to take these fundamental statutory decisions completely away from the BRA and have them approved by the City behind closed doors and by whomever the Mayor may delegate from time to time.

All that can be said about the Applicants' solution to their financing dilemma is that their solution (or lack of same) is consistent with their approach to their temporary parking plan. Through counsel, at the public hearing on the Amendment, the Applicants have admitted the financial plan detailed in the original Application is today not possible to accomplish. (T.V.III at 26-7). Of course, counsel's comments are correct and there have been major changes in the financial

markets with horrendous ramifications to their proposal due to the existing changes to the tax law, with worse results to befall the Applicants if the pending House passed tax bill becomes law.

In substance, all of the Appendices and documents submitted with the original Application concerning financing upon which the BRA made findings as to the practicality of the project, and by which the Authority carried out its statutory duty of setting minimum standards for financing, now stand withdrawn by the Applicants. What has been substituted in lieu of the earlier documentation upon which the BRA must make its findings? Again, the Applicants' answer, from their point of view, is very simple. They propose to take this approval away from the BRA completely and when and if a financing plan is concocted, they will submit it to the City to approve (Development Agreement, Section 4.1), again behind closed doors, and the City may be called upon to disapprove the plan with statements in writing in forty-eight hours. (Development Agreement, Section 4.4). As argued by the undersigned at the recent public hearing, the forty-eight hours is illusionary in that the clock begins to run when their financing plan with a brief summary is deposited in the mail (Development Agreement, Section 11.1) and indeed even the Mayor's designee behind closed doors may never have the opportunity to disapprove whatever the eventual financing plan may be. A fortiori, by the Applicants'

proposed changes First Franklin is totally and effectively cut out of the process and deprived of the opportunity to adduce evidence contrary to the Applicant's future plans and promises, let alone establish a record which can be reviewed by certiorari, all as required by the statutory scheme.

The Applicants' Amendment is their attempt to appear before the Board of Directors of the BRA for the last time and to ask permission to be clothed with the extraordinary powers of eminent domain to take First Franklin's property interest in the site and let them do with it what they will; never again subject to control from the Board of Directors of the BRA.

Indeed, with only the approval of the BRA Director and a designee of the Mayor (who may also be the BRA Director) the Applicants could be permitted to take over the existing operating garage of First Franklin and run it themselves for the next forty years. This example may be far-fetched, but after the Applicants take First Franklin's property by eminent domain, if allowed to do so, there is a very real possibility they will admit that because of the costs associated with building the garage 56 feet below the water table and solving the geo-technical problems necessary to prevent it from floating, and because of the changes in the financial market, they will suggest that only a park be built with no underground parking. The Friends of Post Office Square will have had their

properties immeasurably enhanced at the expense of the City and the general public. By approving the Amended Application, the Board of Directors of the BRA would have no way of stopping it.

CONCLUSION

The Applicants have asked the BRA Board of Directors to abdicate its statutory responsibilities which they believe will abrogate First Franklin's rights. Some judges may argue and all judges will find that such is error of law.

Parking lots and Garages that no longer exist

<u>Location</u>	<u>Approximate Spaces</u>		
Devonshire & Milk St	100	100.00	+
Oliver St (Allright Lot)	60	60.00	+
Atlantic Ave (Boston Auto Parks)	150	150.00	+
Atlantic Ave (Fitzinn)	70	70.00	+
Cage Garage	140	70.00	+
Custom House St	35	140.00	+
Oliver Street	60	35.00	+
High Street Lot	150	60.00	+
Fort Hill Sq Garage	400	150.00	+
High St Garage	350	400.00	+
International Development Site 2 Lots	200	350.00	+
Corner Federal & High	40	200.00	+
Sullivan Place Lot	200	200.00	+
Kingston & Bedford Lot	80	40.00	+
Lincoln St Garage (reduced to 100)	500	200.00	+
Haywood Place Garage	500	80.00	+
Dewey Sq	200	500.00	+
Old Boston Globe Site- Devonshire St Lot	100	500.00	+
State & Kilby Sq Lot	30	200.00	+
		100.00	+
		30.00	+
<u>Parking lots and Garages soon to go</u>			3,365.00 T

<u>Location</u>	<u>Approximate Spaces</u>		
Bedford & Kingston Elevator Garage	400	400.00	+
Kilby St Elevator Garage	300	500.00	+
Washington St & Haywood Place Lot	100	100.00	+
		800.00 T	
		0.0	

0.0

3,365.00
810.00

4,135.00

VI. SECTION RE: TAX PROVISIONS

INTRODUCTION

This Section is submitted to explain why the BRA should not accede to the request of the Friends of Post Office Square to delete the condition contained in the Report and Decision of May 10, 1984 as follows:

The corporation will make certain payments in lieu of real property taxes as required under Chapter 121 A. Subject to receipt by the Authority of approval in writing from the Department of Revenue, Commonwealth of Massachusetts, the Corporation will pay an annual excise tax under section 10 of Chapter 121A in an amount equal to the sum of (i) one percent of the fair cash value (as determined by the City of Boston Assessing Department) of the real and tangible personal property of the Corporation and (ii) five percent of the gross income of the Corporation. Report and Decision at 7. (Emphasis added).

On April 30, 1985 the Assessor of the City of Boston, William Coughlin, pursuant to G.L c 58 s1A requested that the Commissioner of Revenue render an opinion on the proposed form of Chapter 121A taxation described in the application of the Friends of Post Office Square and conditionally approved by this body in its May 10, 1984 opinion. A copy of that request is annexed hereto as exhibit " VI-A". The Question presented for opinion is as follows:

Is it permissible for the excise on gross income mandated by G.L. c.121A §10 to be computed based on the gross income of the c.121A corporation rather than the gross income of the entire 121A project, where the project is owned by a corporation but is developed and operated by a partnership through a net lease agreement with the c.121A corporation, and where the partnership will not be subject to regulation

under G.L. c.121A and the gross income of the c.121A corporation is restricted to certain ground lease payments made by the partnership?

On September 3, 1985, the Commissioner of Revenue, Ira Jackson requested an opinion of the Attorney General on the subject matter of Commissioner Coughlin's request. A copy of that letter is annexed as exhibit "VI-B". In making that request of the Attorney General, Commissioner Jackson commented:

The issue posed by Commissioner Coughlin is whether a 121A corporation can be used as a vehicle to permit another business entity to enjoy the tax benefits of development and the property tax concessions of the 121A program, without the restrictions imposed on 121A entities by the statutory scheme. The relationship between the 121A corporation and the non-121A partnership would be defined by the terms of a contract pursuant to G.L. c.121A §6A. The development of a 121A project by a non-121A entity appears to be without precedent.

Commissioner Jackson was extremely troubled by the proposal of the Friends of Post Office Square. In requesting the opinion from the Attorney General he said:

Finally, while I do not challenge the motives or public spirited intent of these developers, I am troubled by the precedent this proposal, as currently structured, may set for future cases. Might not others of a less public-spirited mind rely upon a favorable decision in this instance in order to avoid the strictures of the statutory scheme, and to facilitate private ends that may not justify the exercise of eminent domain or the grant of substantial tax concessions? Further, might not other developers in the future (or indeed those engaged in this project) amend or fail to meet some of the contract requirements (G.L. c. 121A, §6A) sometime in the future, thereby nullifying the public purposes seemingly protected at the outset but not given statutory protection?

In short, in an area where substantial property tax concessions are being made and the power of eminent domain being exercised for the development of a significant urban

parcel in the state's capitol city, and where the law provides no explicit guidance, I believe it appropriate to seek the opinion of the state's chief legal officer.

On November 6, 1985, Attorney General Bellotti answered the request of Commissioner Jackson. A copy of that opinion is annexed hereto as exhibit "VI-C". The opinion is extremely narrow. It does little more than literally read the words of the statute to permit the measure of the excise tax to be based on the income of the 121A corporation. It failed to discuss the lack of an arms length relationship between the 121A corporation and the partnership, or the ability to use the net lease as a device to shield substantial sums from excise taxation. The attempt to make an analogy between the salary earned by a residential tenant and the income earned by the partnership as the result of a car occupying space in a garage is totally inappropriate. In the first case the tenant's income has nothing to do with occupancy of the residential apartment. In the second case the use of space in the garage is the essential source of the partnership's income.

It has also been noted by Applicants that Chapter 121A permits leasing of projects. G.L. c. 121A, §11 does permit leasing in the list of powers afforded the corporation. It could hardly be otherwise considering that residential and office rental property is the most common "project" developed under the chapter. By generally permitting the leasing of property, the Legislature could not have intended to permit a circumvention of the excise tax provisions through the use of

related and interlocking corporations and partnerships. It is too obvious for this Department and for the Commonwealth of Massachusetts Department of Revenue to permit, and should be rejected by the board.

Several reasons were offered for the Attorney General's failure to discuss the broad policy issues raised by Commissioner Jackson's letter. The most pertinent for the purposes of the Boston Redevelopment Authority is that those broader issues are the responsibility of that body [The Boston Redevelopment Authority] "which has not yet finally approved the project". Opinion of the Attorney General, at 10.

Commissioner Jackson was obviously not impressed with the opinion of the Attorney General. In answering Commissioner Coughlin by letter on November 25, 1985, a copy of which is annexed hereto as Exhibit "VI-D", Commissioner Jackson stated:

The question posed by you raised important legal issues of first impression and possibly wide-ranging importance. In accordance with the provisions of G.L. c. 58, §1A, I forwarded your question to the Attorney General for his opinion. I also raised several concerns which I had about the legal propriety of the proposed development scheme. The Attorney General has responded to your question in a narrow and direct fashion, seeing fit to leave my stated concerns unanswered.

I hereby transmit the Attorney General's opinion to you for whatever guidance you may derive from it.

It is obvious that the Commissioner of Revenue has substantial and justified reservations concerning the proposal of the Friends of Post Office Square. It is highly unlikely

that he will approve this scheme which diverts substantial income from the 121A corporation and thereby prevents the city and the state from receiving the tax required by the legislature to be imposed on 121A corporations. Commissioner Jackson looked beyond the Attorney General's elementary exercise in statutory interpretation and rightly saw that there is no reason whatever to approve a plan so clearly contrary to the intent of the Chapter.

The response of the Friends of Post Office Square is not to abandon the proposed scheme and let the 121A corporation be taxed on the entire gross income of the Project. No, instead, because Commissioner Jackson, for valid policy reasons, refuses to approve the scheme, the Friends propose to do away with the requirement for his approval. For the reasons stated in the remainder of this memorandum this board should refuse this outrageous request.

Before turning to the revenue loss to the City which results from the Friend's plan, a comment is in order concerning the request that Attorney General Bellotti's Opinion be deemed sufficient approval. That Opinion said that if corporate income is only rent, the statute allows the tax to be based on the rent. A narrow legal construction which pre-supposes that the Friends' arrangement is in place.

Commissioner Jackson's approval was not required because of his superior ability to interpret a statute. He was asked, as the chief taxing officer of the Commonwealth, to

review and pass on the wisdom and propriety, or lack thereof, of the substance of the arrangement. He was asked to address the more fundamental question of why the BRA should permit this arrangement whereby corporate income is only rent. The Attorney General said that if this is the arrangement, then these consequences follow. He did not attempt to pass on the policy and revenue ramifications of splitting off a separate partnership for purposes of manipulating gross income.

The Friends have asked for an unprecedented arrangement. This Board was concerned enough about the novel set up, and excise tax consequences, to refer the issue to the Department of Revenue. That Department has so far refused to endorse the plan. This Board should do the same.

THE EFFECTS OF THE APPLICANTS' PROPOSAL

In addition to forming a 121A corporation, The Friends also propose to create a partnership (the "partnership" or "lessee") to lease the garage portion of the development from the 121A corporation for an annual amount currently to be determined by a formula set forth in the application. Through this arrangement, the Applicants propose to divert most of the gross income of the project (the "project income") away from the taxable entity, the 121A corporation, and thereby deprive the City of tax revenue. This is in contravention of one of the fundamental objectives of Chapter 121A. Applicants propose

to pay a tax based in part on only that amount of money which they establish as "rent" under the lease they intend to execute between their corporation and their partnership. The resulting rental amount, the "corporation income" is proposed to be one basis for the project's tax liability under Chapter 121A.

The result of the Applicants' proposal is tax savings to the Friends greatly in excess of those permitted by Chapter 121A. As this memorandum and its accompanying appendices will explain in great detail, the Applicants have convinced the B.R.A. to approve a plan whereby:

The annual real property taxes which would be due under Chapter 59, the statutory scheme under which real and personal property is taxed in the Commonwealth are eliminated and replaced with an excise tax under section 10. This results in a savings of \$4,844,162 over the first eleven years of the project. This amount represents the legitimate tax savings under Chapter 121A, the benefit the Legislature intended to confer.

Those tax benefits are then increased by funneling gross income through a self-serving lease arrangement resulting in a further tax savings over eleven years of \$3,053,068 under the revised proposal submitted in 1985 by the Friends.

Based upon the revised proposal, a total tax of \$14,190,000 which would be due over the eleven years under Chapter 59 is reduced by \$8,448,030 to \$5,741,970.

To illustrate, a typical year highlights the savings effected by the Applicant's plan. In year 3 (1988) the

Applicants' payments, which would be \$1,290,000 under Chapter 59's ad valorem tax should drop to \$801,036 under the Section 10 excise. Using the leasing arrangement proposed the tax drops to \$488,964. There is no justification in law or policy for a group of banks, utilities and limited partnerships to be able to aggrandize their surrounding real estate, force a parking lot competitor out of business, and top it off by whittling their tax liability to roughly one third of its just amount.

THE PROPOSAL DOES NOT COMPLY WITH THE REQUIREMENTS OF
CHAPTER 121A OF THE GENERAL LAWS

Section 10 of Chapter 121A grants an exemption from real and personal property taxes for property of a Chapter 121A corporation. Notwithstanding that exemption, the corporation must pay an excise tax to the Commonwealth for eventual distribution to the city or town in which the project is located. The formula by which that excise tax is calculated is set forth with great particularity in the third paragraph of Section 10. A brief comparison of the statutory formula with the taxes proposed by the Applicants will be followed by a consideration of the effects of the proposal

Under that formula, the tax shall be equal to the sum of:

- a) 5% of the gross income from all sources, plus
- b) An amount equal to \$10 per thousand (one percent) of the fair cash value of all real and tangible personal property.

If the assessor is permitted to value the garage at its fair market value each year, as required by chapter 121A, instead of at an artificial value as set forth in the original proposal of the "Friends" the only remaining variable is the "gross income" of the 121A corporation. Despite the negative reception they have received at the State Department of Revenue, the Applicants continue to distort the gross income component of Section 10.

The ninth paragraph of Section 10 defines "gross income" as follows:

"For the purposes of this section, 'gross income' shall mean payments actually made by persons for the right to reside in or occupy any portion or all of the project and shall not be deemed to include any payments made by any governmental unit to or on behalf of such corporation or to or on behalf of any tenant of such corporation which are in addition to such payments actually made by such tenant."

The proposal as approved by the B.R.A. seeks to circumvent this definition through the use of a lease to an unidentified limited partnership thereby depriving the state of the excise tax mandated by Chapter 121A.

The fee for a parking space is a payment "actually made by persons for the right to . . . occupy any portion . . . of the project". See e.g. Beal v. Eastern Air Devices, Inc., 9 Mass. App. 809, 910 (1980), Simons v. Murray Realty, Inc., 330 Mass. 194 (1953). The projected "total revenue" from the

leasing of parking spaces is in excess of \$6 million per year (see Appendix "VI-E", Column 1)-- an amount which reflects the true gross income component of the formula as envisioned by the Legislature. Interposing a limited partnership between the driver/tenant and the redevelopment corporation is a subterfuge, to which the B.R.A. is a party by approving the application.

Although Chapter 121A conferred "some tax advantages from the excise as compared with ordinary local taxation", Opinion of the Justices, 334 Mass 760, 762 (1956), it does not provide complete exemption. It requires an excise tax and the excise tax is based upon characteristics of the property. Fair cash value and gross income generated by the project are both integrally bound to the real estate. Although it is an excise levied on the corporation, it is fundamentally a tax upon the property, and property tax principles apply.

It is a firm principle of real property taxation that the fair market value of any property is determined based upon the whole property. In Donovan v. Haverhill, 247 Mass. 69, 72 (1923), it was said that "... the assessment whether to the owner or to the person in possession must be an assessment upon the entire estate and not any interest therein. It follows that an assessment may not be laid upon leases as an interest in the land which is to be assessed...". The court refused to approve a rule which would lower the taxable value of the property based upon a temporarily disadvantageous lease. Self

dealing leases between business affiliates have been refused recognition as evidence of value, Alstores Realty Corp. v. Board of Assessors of Peabody, 391 Mass. 60 (1984). Similarly, the interposition of a limited partnership in no way detracts from either the true fair cash value of the property or the potential gross income which it can generate. Chapter 121A intends a tax upon the value of the entire project, not some portion represented by a collusive lease.

Section 10 refers to the tax payable by the 121A corporation as based in part on "its gross income." Applicants have seized upon this use of language to construct a scheme whereby the corporation's income is manipulated by use of a lease of the premises. "Gross" income is converted to "net" income by filtering all expenses through the lessee and returning to the 121A corporation, as rent, only those sums deemed expendable for taxes. This was not intended when Chapter 121A was drafted.

The gross income generated by the project was intended to be the basis for the excise calculation and not merely what Applicants choose to filter through to a corporate entity. In Opinion of the Justices, 341 Mass. 760, 773-74 (1960) which considered the exemption provisions of Chapter 121A, the Court repeatedly refers to the "gross income of the project" rather than the corporation, clearly treating them as one in the same. Based upon their own figures, Applicants' leasing scheme results in a loss of taxes in the first eleven years of the

project of over three and a half million dollars. (See Appendix "VI-F", Column 5).

Applicants have doubtless attempted to fit their plan within the language of the statute. Yet technical compliance with formalities has often been refused recognition in the area of taxation where the result is to "elevate form over substance." Brown, Rudnick, Freed & Gesmer v. Board of Assessors of Boston, 389 Mass. 298, 303 (1983). There a law firm incorporated a "domestic business corporation" to which it sold its taxable personal property, and then leased it back. The firm claimed exemption for the "stock in trade" of the leasing corporation. The firm had complied with all of the statutory formalities. Both the Appellate Tax Board and the Supreme Judicial Court rejected the exemption. Quoting Higgins v. Smith, 308 U.S. 473 (1940), the Court wrote:

"The Government may not be required to acquiesce in the taxpayer's election of that form for doing business which is most advantageous to him. The Government may look at actualities and upon determination that the form employed for doing business or carrying out the challenged tax event is unreal or a sham, may sustain or disregard the effect of the fiction as best serves the purposes of the tax statute. To hold otherwise would permit the schemes of taxpayers to supersede legislation in the determination of the time and manner of taxation. It is command of income and its benefits which marks the real owner of property." Brown, Rudnick, supra at 304-305.

3.2.2.2. Sustainable innovation and the role of the automobile industry

Concerning the role of the automobile industry in the process of sustainable development, it is important to note that the automobile industry is a major source of environmental pollution and energy consumption. The automobile industry is also a major source of employment and economic growth in many countries.

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The Attorney General's opinion failed to recognize this fundamental principle. The Commissioner of Revenue, the chief taxing officer for the Commonwealth was not so misled. The Applicants' "scheme" for a sham leasing arrangement should be rejected.

THE DETAILS OF THE APPLICANTS' APPLICATION
REVEALS THE ENORMOUS DIMENSIONS OF THE REVENUE LOSS

As noted, Chapter 121A confers a tax exemption upon the property of a 121A corporation and substitutes an excise tax based upon one percent of the fair cash value of that property and five percent of the gross income of the project. This formula has accurately been described as one of "tax concessions", Boston Edison Company v. Boston Redevelopment Authority, 374 Mass. 37,53 (1977) and in the instant case would so benefit the Applicants.

Applicants are not satisfied with these concessions and have created their own tax structure which they claim complies with Section 10. They have established a scheme whereby gross income becomes net income by interposition of a limited partnership lessee.

The details of the Applicants' scheme are set forth in their proposed lease. In Appendix 17 of the proposal as amended by their most recent Application, the Applicants summarize the basic provisions of the ground lease between the redevelopment corporation and the limited partnership with the

caveat that "the precise terms of the lease may vary from the foregoing." The rent to be paid by the limited partnership to the redevelopment corporation will be the "gross income" of the corporation upon which Applicants expect their excise to be based. That rent formula based on the proposed amendment can be summarized as follows:

Rent on Proposed Ground Lease from 121A Corporation to Limited Partnership

Rent shall be the Sum of:

- A. Annual Base Rent (ABR) i.e. \$265,000
- B. Percentage Rent (PR)

Percentage Rent may be expresses as follows:

$$PR = AP (TR - D - ABR - ADS)$$

Definitions:

AP = 0 during construction phase
100% in all other Years

TR (Total Revenue) = all income of Tenant

ADS (Approved Debt Service) = principle and interest on secured debt i.e. bonds

D (Deductions) = salaries and benefits
marketing expenses
operating and maintenance costs
reserve for uncollectible accounts
consultant fees
taxes
amortization of pre-opening expenses

As should be abundantly clear, the rent received by the redevelopment corporation is substantially less than the gross income of the project. (See Appendix "VI-E", Columns 1 and 3).

This memorandum in its appendices attempts to calculate from the proposal submitted by the Applicants the amount of tax benefit which the Applicants seek beyond those permitted by Chapter 121A. These figures are restricted to the first eleven years of the project, those for which Applicants have provided projections. These projections are stale since they are over two years old. (For example the projections set forth a daily parking rate in 1986 of \$12 per day. The present rate in Mr. Leventhal's garage is \$16). Nevertheless they provide a rough gauge of the tax loss under the proposal, figures The Friends multi-appendiced application has conspicuously failed to provide. Since the potential gross and net income of the limited partnership have been provided, a projection of rent to be paid to the redevelopment corporation and the excise to be paid to the Commonwealth can be approximately determined. In making these calculations, one must determine the amount of the bonds or other financing instrument to be issued by the partnership, the interest rate, the method of repayment and the life of the financing. Since no precise figures were submitted, we have estimated for purposes of this calculation that the bonds were amortized on a direct reduction basis at an 11% interest rate as claimed by the Applicants over a period of 25 years, halfway between the 20-30 years proposed.

In light of the ten percent equity requirement of G.L. c. 121A, §7 we assumed that \$38,700,000 would be financed resulting in an approximate annual debt service of \$4,555,764.

and the other two previous generations of the family were (1970-1974) 100% nonwhite, while the next generation (1975-1979) was 50% nonwhite and 50% white. This pattern of increasing racial heterogeneity continued through the 1980s and 1990s, with the 1990s generation (1990-1994) being 75% nonwhite and 25% white, and the 2000s generation (2000-2004) being 85% nonwhite and 15% white.

Thus, the family's racial heterogeneity increased over time, and this pattern of increasing racial heterogeneity was consistent across all three generations of the family. The 1970s generation (1970-1974) was 100% white, while the 1980s generation (1980-1984) was 50% nonwhite and 50% white, and the 1990s generation (1990-1994) was 75% nonwhite and 25% white. The 2000s generation (2000-2004) was 85% nonwhite and 15% white. The 1970s generation (1970-1974) was 100% white, while the 1980s generation (1980-1984) was 50% nonwhite and 50% white, and the 1990s generation (1990-1994) was 75% nonwhite and 25% white. The 2000s generation (2000-2004) was 85% nonwhite and 15% white.

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Thus, the family's racial heterogeneity increased over time, and this pattern of increasing racial heterogeneity was consistent across all three generations of the family. The 1970s generation (1970-1974) was 100% white, while the 1980s generation (1980-1984) was 50% nonwhite and 50% white, and the 1990s generation (1990-1994) was 75% nonwhite and 25% white. The 2000s generation (2000-2004) was 85% nonwhite and 15% white.

Other assumptions are noted in the appendices. A description of each appendix and the source of its figures precedes the appendices.

These figures reveal the true nature of the Applicants' arrangement. The proper "tax concessions" under Section 10 appear in Appendix "VI-F", Column 4; \$4,844,162. This is the savings under the Section 10 formula using project income and true fair cash value, compared with Chapter 59 liability. Applicants would be entitled to a tax savings approaching 5 million dollars over the eleven years represented. Applicants attempt to substantially increase that amount by use of their leasing scheme.

If this were merely the result of the intended tax concessions inherent in Section 10, there would be no objection. Much of it is instead the product of Applicants' manipulation of Section 10. The amount which should be paid as excise for this project is 1% fair cash value and 5% of the project's income. Instead Applicants propose to pay the amounts substantially below the Section 10 excise of approximately \$3 million dollars.

The basic issue for this Board, regardless of whether the Attorney General is technically correct, is why should this be approved. It is uncontrovertible that this is a novel approach around the excise provisions. What reason has been offered for permitting it? Applicants have provided neither a projection of the amount or money involved nor a basis upon which to grant this extraordinary extra benefit.

FAILURE TO REVEAL 6A PAYMENTS

Applicants' proposal, the draft 6A contract and the rent formula in the draft lease all fail to indicate the "...specific or ascertainable amount in addition to the excise prescribed by section ten as may have been stated in the Application." G.L. Ch.121 §10. No such amount has ever been revealed to this Board.

A similar challenge was raised in Boston Edison Co. v. Boston Redevelopment Authority, 374 Mass. 37 (1977). There the failure to specify the tax amount in the Application was deemed not to invalidate the approval of the project or taint the BRA's determination of reasonableness. There, however, non-compliance was excused because the specific amount was disclosed and on the record. Id. at 73. "Thus, the BRA had the opportunity, of which the return indicates it availed itself, to consider this factor prior to its vote approving the project..." Id. The "purposes of requiring disclosure have been served." Id.

In the present case, no disclosure has been made. Instead, the Applicants present a complicated formula for calculation of rent (changed by the Amendment), deduction of debt service (financing changed by the Amendment) and splitting payments between the City and a trust (percentages and amounts changed by the Amendment). The Applicants proposed a \$350,000 tax cap (deleted in the Amendment) and base rent on income projections two years stale.

It is respectfully submitted that the Edison case was fair warning that disclosure is required. Technical compliance was excused there. Here, absolutely no disclosure has been made in technical compliance or otherwise. Therefore, the Application is defective and there is no substantial evidence of reasonableness due to the omission of the specific and ascertainable amount of section 6A payments from the record.

CONCLUSION

For the reasons set forth above, the Boston Redevelopment Authority should refuse to amend its decision by deleting the requirement for the approval of the Department of Revenue. This will have the effect, if the project is ever approved, of making sure that the City of Boston receives what the legislature intended it should receive from a c. 121A, project.

EXPLANATION OF APPENDICES

- Appendix "VI-E" indicates the project gross income (Column 1), taken from Applicants' figures, as well as five percent of that income (Column 2). It also sets forth, in Column 3, the Corporation's gross income based upon the rent formula set forth above, and five percent of that figure (Column 4). Column 5 includes the difference. This Column (5) reflects the added tax savings beyond what was intended by Section 10, based only upon Applicants' manipulation of the gross income aspect of Section 10, for the first eleven years of the project.
- Appendix "VI-F" compares the taxes which would be due without Chapter 121A, that is, under Massachusetts' property tax statutes, with those due under Chapter 121A, section 10, assuming, first, that corporate gross income is used (Columns 1 and 2) and, next, that project gross income is used (Columns 3 and 4). Column 1 calculates taxes due under Section 10 using the Applicants' proposal. The figures represent 1% of the fair cash value of the property, assumed to be its original cost of \$43,000,000, plus 5% of the lessor corporation's income which is the rent. The rent is based upon the formula reprinted in the brief, using the assumptions previously set forth.

Column 3 makes the same calculation using true gross income. Gross and Net Income figures were provided by the Applicants in their "Post Office Square Development Feasibility Analysis" based on a 1400 car garage.

Columns 2 and 4 subtract the amounts in Columns 1 and 3 from the amount we assumed would be levied on the project under c.59, assuming it was valued at cost and taxed at \$30 per \$1,000, a rate lower than last year's Boston commercial rate.



Boston
Raymond L. Flynn, Mayor

IRVING JACKSON
COMMISSIONER

MAY - 1 1985

DEPARTMENT OF REVENUE

April 30, 1985

Ira A. Jackson
Commissioner
Department of Revenue
100 Cambridge Street
Boston, MA

Re: Request for Opinion

DEPARTMENT OF REVENUE

MAY - 7 1985

RULINGS AND REGULATIONS
BUREAU

Dear Commissioner Jackson:

I am requesting an opinion on a question arising under G.L.c.121A, §10, relating to the excise imposed by that section. This request is made pursuant to G.L.c.58 §1A.

Question Presented for Opinion

Is it permissible for the excise on gross income mandated by G.L.c.121A, §10 to be computed based on the gross income of the c.121A corporation rather than the gross income of the entire 121A project, where the project is owned by a corporation but is developed and operated by a partnership through a net lease agreement with the c.121A corporation, and where the partnership will not be subject to regulation under G.L.c.121A and the gross income of the c.121A corporation is restricted to certain ground lease payments made by the partnership?



Background:

The Boston Redevelopment Authority (BRA) and Raymond L. Flynn, Mayor of Boston, have approved an application to carry out a project in Boston, under G.L.c.121A, as amended ("Chapter 121A"). A copy of the BRA Report and Decision is attached hereto as Exhibit A. The BRA has also approved the formation of a corporation to be known as Post Office Square Redevelopment Corporation ("Corporation") to carry out the project. The project is known as the Post Office Square Redevelopment Project ("Project"). The Project consists of the acquisition by the Corporation of a parcel of land ("Site") bounded by Congress, Franklin, Pearl and Milk Streets, demolition of the existing parking garage, construction of a new underground parking garage and creation of a major new public park space at grade above the new garage.

The Corporation intends to lease the Site to a partnership ("Partnership") under a long term ground lease ("Lease"). The Lease will require the Partnership to construct, operate and maintain the new garage. Under the terms of the ground lease, the Corporation will receive from the Partnership an amount representing base rent, and an additional amount based on the net income of the Partnership. A summary of the basic provisions of the ground lease between the Corporation and the Partnership, as set forth in Appendix 17 to the BRA application, is attached hereto as Exhibit B.

One of the business purposes served by the use of a partnership to construct, operate and maintain the new garage involves the ability of a partnership to pass on to outside investors the benefits attributable to depreciation deductions with respect to the garage. The ability to raise equity for the Project in this manner reduces the costs of financing the Project.

The Partnership has not yet been formed. However, the 121A Corporation has stated that when it is formed, the Partnership will not be an entity subject to Chapter 121A but will be subject to certain Chapter 121A regulations. The Corporation will cause the Partnership to be formed. The Corporation may participate in the Partnership as a general partner. The 121A Corporation will not receive any income as a general partner in the Partnership, except for a stipulated sum to be paid as rent under the ground lease.

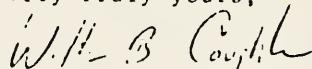
The Corporation proposes to pay the excise required under the G.L.c.121A, §10 based on one percent of the fair market value of the project plus five percent of the gross income of the corporation as limited by the ground rent. In addition, the Mayor and the Assessors intend to enter into a contract authorized by Section 6A of Chapter 121A (the "6A Contract"). Under the terms of the 6A Contract, the Corporation will, effectively pay all of its income, net of financing and other necessary costs of maintaining and operating the Project, to or for the benefit of the City of Boston.

Your opinion on the appropriate manner to calculate the excise payment under G.L.c.121A, §10 is therefore requested. The Corporation also proposes to execute the section 6A contract based on the assumption that the G.L.c.121A§10 payment can be legally calculated on the Corporation's rental income only. The options for financing the project will be affected by the tax treatment of the Project and your opinion of the legality of the proposed interpretation of the G.L.c.121A§10 excise payment.

Previously, through a letter dated April 13, 1984 Mr. James White of Palmer and Dodge, counsel for the developer, requested a ruling on the proper method for calculating the excise payment required by G.L.c.121A, §10. A copy of the letter is attached hereto as Exhibit C. John J. Tracy, Deputy Chief, Rulings and Regulations Bureau, Department of Revenue responded by stating that the Department of Revenue was unable to give an opinion at that time. A copy of Mr. Tracy's letter is attached hereto as Exhibit D.

Thank you for your attention to this request for a ruling. If you require any additional information please let me know.

Very Truly yours,



William B. Coughlin
Commissioner

JDS/pd



IRA A. JACKSON
COMMISSIONER

The Commonwealth of Massachusetts
Department of Revenue
Leverett Saltonstall Building
100 Cambridge Street, Boston 02201

September 3, 1985

Francis X. Bellotti
Attorney General
Room 2001
One Ashburton Place
Boston, MA 02108

Dear General Bellotti:

On April 30, 1985, the Commissioner of Assessing of the City of Boston, William Coughlin, asked my opinion on a matter relating to excise treatment given a development project proposed pursuant to G.L. c. 121A. The project in question is owned by a 121A corporation but would be developed and operated by a partnership that will not be subject to regulation under c. 121A. The gross income of the 121A corporation will be restricted to certain ground lease payments and a percentage of the partnership's net income. Mr. Coughlin has asked whether it is permissible for the computation of the gross income portion of the excise imposed by G.L. 121A, \$10 to be based on the gross income of the c. 121A corporation rather than the gross income of the entire 121A project. A copy of Commissioner Coughlin's letter is enclosed for your review.

The issue posed by Commissioner Coughlin is whether a 121A corporation can be used as a vehicle to permit another business entity to enjoy the tax benefits of development and the property tax concessions of the 121A program, without the restrictions imposed on 121A entities by the statutory scheme. The relationship between the 121A corporation and the non-121A partnership would be defined by the terms of a contract pursuant to G.L. c. 121A, §6A. The development of a 121A project by a non-121A entity appears to be without precedent.

Commissioner Coughlin's request for an opinion was made pursuant to G.L. c. 58, §1A, which provides in relevant part that the Commissioner of Revenue

shall, at the request of the assessors of any city or town or upon his own initiative, give his opinion ... upon any question arising under any statute relating

Francis X. Bellotti
September 3, 1985
Page 2

to the assessment, classification and collection of taxes or he may obtain the opinion of the attorney general upon such question. In either case, the opinion of the commissioner or the opinion of the attorney general if any, shall be binding.

Pursuant to the terms of G.L. c. 58, §1A, I now seek your opinion on Commissioner Coughlin's question. I take this action for several reasons.

First, this is a matter of first impression involving the proper interpretation of a particular statute - a statute which does not directly address the situation presented by Commissioner Coughlin. While I do not believe that the statutory scheme is hopelessly ambiguous, I do recognize that colorable legal arguments can be made on both sides of the issue.

Second, no decisional law appears to exist which might assist me in determining the proper scope and meaning of the relevant statutes.

Third, the proposal to transfer the development rights of the project to a non-121A entity enables the developer to avoid statutorily imposed restrictions on the profits, payments and conduct of 121A entities. A question you may feel the need to answer is whether these restrictions are essential components of the development of a 121A project.

Fourth, while I, as Commissioner of Revenue, administer the excise portion of the statute, G.L. c. 121A is really a comprehensive and complex urban redevelopment statute, not a tax statute, and therefore I defer to your judgment in an area where my regulatory authority is limited.

Finally, while I do not challenge the motives or public-spirited intent of these developers, I am troubled by the precedent this proposal, as currently structured, may set for future cases. Might not others of a less public-spirited mind rely upon a favorable decision in this instance in order to avoid the strictures of the statutory scheme, and to facilitate private ends that may not justify the exercise of eminent domain or the grant of substantial tax concessions? Further, might not other developers in the future (or indeed those engaged in this project) amend or fail to meet the contract requirements (G.L. c. 121A, §6A) sometime in the future, thereby nullifying the public purposes seemingly protected at the outset but not given statutory protection?

Francis X. Bellotti
September 3, 1985
Page 3

In short, in an area where substantial property tax concessions are being made and the power of eminent domain being exercised for the development of a significant urban parcel in the state's capitol city, and where the law provides no explicit guidance, I believe it appropriate to seek the opinion of the state's chief legal officer.

I respectfully request your opinion on this matter, and my legal office stands ready to provide your staff with whatever assistance they may need.

Very truly yours,



Ira A. Jackson
Commissioner of Revenue

IAJ/klp



THE COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF THE ATTORNEY GENERAL

JOHN W. MC CORMACK STATE OFFICE BUILDING
ONE ASHBURTON PLACE, BOSTON 02108-1698FRANCIS X. BELLOTTI
ATTORNEY GENERAL

November 6, 1985

Ira A. Jackson
Commissioner of Revenue
Department of Revenue
100 Cambridge Street
Boston, MA 02204

Dear Commissioner Jackson:

Pursuant to G.L. c. 58, § 1A, ¶ 5,^{1/} you have asked my opinion on a question relating to computation of the excise tax due from a development project proposed under G.L. c. 121A.^{2/}

1/ That statute provides in relevant part that:

[the Commissioner of Revenue] shall, at the request of the assessors of any city or town or upon his own initiative, give his opinion to assessors and collectors upon any question arising under any statute relating to the assessment, classification and collection of taxes or he may obtain the opinion of the attorney general upon such question.

Your request states that your opinion on this question had previously been asked by the Commissioner of Assessing of the City of Boston.

2/ Chapter 121A has received extensive attention from both the Legislative and judicial branches of government. As originally adopted, chapter 121A "was an attempt to eliminate substandard living conditions in urban areas by utilizing private capital to

(footnote continued)

Ira A. Jackson
Commissioner of Revenue
November 6, 1985
Page 2

Your letter states the facts giving rise to your request as follows. A corporation organized under chapter 121A will acquire the property in question from the City of Boston and would then give a forty-year ground lease to develop and operate that property to a limited partnership that would not be organized under that statute.^{3/} The partnership would demolish the building now on the site and construct and operate

(footnote continued)

revitalize decaying urban areas. St. 1945, c. 654, §§ 1 and 3." Bronstein v. Prudential Insurance Co., 390 Mass. 701, 704 (1984). In 1960, chapter 121A was amended to include construction of commercial, industrial, and other non-residential buildings. Id. Despite that change, however, "the fundamental underpinning of the statute remained the same, i.e., that such projects be undertaken for a public purpose." Id. at 704-05 (citing Opinion of the Justices, 341 Mass. 760, 776-77 (1960)).

This public purpose is accomplished, however, through reliance on private corporations or, as permitted by G.L. c. 121A, § 18C, individuals or other entities regulated or organized pursuant to chapter 121A. But see G.L. c. 121A, § 8 (every chapter 121A corporation "shall be deemed to have been organized to serve a public purpose. . ."). Thus "[a]lthough there is some measure of supervision and participation by a public agency, urban renewal projects under c. 121A are primarily conceived of and implemented by the private corporations which will operate them. Further, these projects receive large public benefits [through the tax concessions in G.L. c. 121A, § 10]." Boston Edison Co. v. Boston Redevelopment Authority, 374 Mass. 37, 50 (1977).

3/ At the expiration of the lease, title to the property would be transferred from the corporation to the City of Boston.

Ira A. Jackson
Commissioner of Revenue
November 6, 1985
Page 3

a large underground garage. The surface of the site would be maintained as a park. During the term of that lease the chapter 121A corporation would receive a percentage of the partnership's net income together with certain fixed sums. The precise question you have referred to me is whether, in those circumstances, "it is permissible for the computation of the gross income portion of the excise imposed by G.L. c. 121A, § 10, to be based on the gross income of the c. 121A corporation rather than the gross income of the entire 121A project."^{4/} In the circumstances described by your letter, it is my opinion that it is not only "permissible" but, except as discussed below, ordinarily to be anticipated that the computation be based on the income of the chapter 121A corporation.

My first ground for that opinion is the clear and unambiguous language of the statute, which must be given its ordinary meaning. Bronstein v. Prudential Insurance Co., 390 Mass. 701, 704 (1984). In relevant part, G.L. c. 121A, § 10, ¶ 3, provides:

. . . [S]uch corporation shall pay in each calendar year to the commonwealth . . . an

^{4/} I assume that by "the entire project" you refer to the partnership that will actually develop and operate the underground garage.

Ira A. Jackson
Commissioner of Revenue
November 6, 1985
Page 4

excise . . . equal to five per cent of its
gross income in such preceding calendar
year

The obvious antecedent of "its" in that provision is "such corporation," and so the intent of the Legislature appears to be that the relevant excise on the corporation will be measured solely by reference to that corporation's income.

Any contrary reading would immediately lead to serious difficulties and therefore should be avoided. See Adamowicz v. Ipswich, 395 Mass. 757, 760 (1985) (statutes should be construed so as to produce workable results). For example, looking beyond the income of the chapter 121A corporation would clearly be inappropriate in the majority of chapter 121A projects which involve residential development. Obviously, the Legislature did not intend that the amount of a chapter 121A corporation's excise should depend on the amounts of its tenants' personal incomes. Furthermore, even in commercial chapter 121A projects, there seems to be no basis for looking beyond the corporation's income. The intended measure of the excise assessed on the gross income of a chapter 121A corporation that is a commercial lessor logically should be that corporation's own gross income rather than the gross income of the various entities that may lease office space from it.

Ira A. Jackson
Commissioner of Revenue
November 6, 1985
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This result follows not only from the plain language of G.L. c. 121A, § 10, ¶ 3, but also from the purpose which I believe underlies the excise imposed by that provision. That excise tax is assessed in lieu of the local property tax from which the chapter 121A corporation is exempted by G.L. c. 121A, § 10. See Opinion of the Justices, 341 Mass. 760, 774 (1960). Gross income derived from occupancy of a piece of property is one indication of the property's value, cf. Alstores Realty Corp. v. Board of Assessors of Peabody, 391 Mass. 60, 66-69 (1984), and it is also commonly used as a basis for measuring excise taxes. See, e.g., G.L. c. 63, § 22A (gross investment income); Commissioner of Revenue v. Massachusetts Mutual Insurance Co., 384 Mass. 607, 612 (1981). On the other hand, the gross income of the corporation's lessees measures their individual business success or the value of their individual leases to them; in neither case does that income seem rationally related to the value of the tax exemptions granted to the chapter 121A corporation.

The fact that the lease proposed here is a forty-year ground lease to develop the property and operate a garage on it rather than a short-term commercial lease for office space may have practical and financial consequences for the project, but

Ira A. Jackson
Commissioner of Revenue
November 6, 1985
Page 6

I see no reason to infer that the Legislature intended that fact, standing alone, to require different treatment for purposes of section 10. Indeed, chapter 121A elsewhere discusses "ground rent," the payment made under a ground lease, in terms that suggest that a "ground lease" for purposes of chapter 121A should be viewed as simply one specific category of a "lease" rather than as a distinct form of legal interest. See G.L. c. 121A, § 15(1) ("expenses . . . including any ground rents or other payments under any lease . . ."). See also G.L. c. 121A, § 10, ¶ 9 ("gross income" includes "payments actually made by persons for the right to . . . occupy . . . all of the project . . .").

For these reasons, I conclude that the answer to your question is that the relevant income under G.L. c. 121A, § 10, ¶ 3, is that of the chapter 121A corporation and not that of the limited partnership.^{5/}

^{5/} Of course in taxing that income, the Department of Revenue may exercise its statutory powers to verify the corporation's return and, if warranted, to assess any additional tax it finds, as a matter of fact, to be due. See G.L. c. 121A, § 10, ¶ 5; G.L. c. 62C, § 26(b); cf. Brown, Rudnick, Freed & Gesmar v. Board of Assessors of Boston, 389 Mass. 298, 303 (1983); Massachusetts Pike Towers Associates v. Commissioner of Revenue, 581 Mass. 584 (1980).

Ira A. Jackson
Commissioner of Revenue
November 6, 1985
Page 7

This opinion is limited to answering the precise question you have asked. I do not hereby express any views as to the legality, propriety, or wisdom of the proposed project in terms of chapter 121A or other provisions of law. Cf. 1961/62 Op. Atty. Gen., Rep. A.G., Pub. Doc. No. 12 at 199, 200-01 (1962). Your request for an opinion notes, and other comments I have received argue, that the proposed project may not be authorized by G.L. c. 121A or may be otherwise unlawful.^{6/}

6/ It has been argued that by giving a forty-year ground lease to the partnership, the corporation will "transfer in whole or in part the land or interests therein . . ." to an entity not organized under chapter 121A and so will violate G.L. c. 121A, § 11, ¶ 3. It has also been suggested that the terms of the ground lease between the chapter 121A corporation and the limited partnership may not reflect an ordinary, arms' length commercial transaction. Cf. 760 C.M.R. § 25.09(4)(a) (regulations of the Executive Office of Communities and Development making 5% of gross rental the maximum fee paid by a state-regulated chapter 121A entity to a project manager). Finally, it has also been suggested that the limited partnership should itself be considered the true developer of the garage and taxed accordingly or that it should be treated as the developer of a separate subproject falling under chapter 121A for which a separate excise payment would be due. Cf. G.L. c. 121A, § 1, ¶ 6 ("project" defined as "construction . . . operation and maintenance . . ." without explicit reference to formal ownership). On the other hand, the proponents of the project, the City of Boston, and certain other officials have responded to each of those arguments and have also stressed what they perceive would be the substantial financial and esthetic benefits the proposed project would have for Boston and the overall public interest.

Ira A. Jackson
Commissioner of Revenue
November 6, 1985
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It would be inappropriate for me to address those arguments for three basic reasons. First, I have not been directly asked for an opinion on those matters; your specific request relates only to "the computation of the gross income portion of the excise" and so is quite narrow. In issuing formal opinions it has been my consistent policy to answer only those questions explicitly presented to me and those which must necessarily be resolved to answer the questions explicitly asked. Cf. Opinion of the Justices, 386 Mass. 1201, 1221 (1982) (Supreme Judicial Court advisory opinions are confined to the particular questions of law submitted to the Court).

Second, even if you had explicitly asked for an opinion on one or more of the broader questions mentioned above, I would respectfully have to decline an answer. It has been my consistent policy, and that of my predecessors, to issue formal opinions on only those questions that involve matters which are within the specific area of authority of the officer or agency making the request. 1967/68 Op. Atty. Gen. No. 30, Rep. A.G., Pub. Doc. No. 12 at 95, 96 (1967); cf. Opinion of the Justices, 386 Mass. 1201, 1219-20 (1982) (Supreme Judicial Court renders advisory opinions only as necessary to enable state departments to perform their duties). Your general duties with respect to

Ira A. Jackson
Commissioner of Revenue
November 6, 1985
Page 9

G.L. c. 121A are limited and appear to involve only the "administration of taxes" rather than oversight over the operation or enforcement of chapter 121A generally. See G.L. c. 121A, § 10, ¶ 5.^{7/} Your specific authority to opine on G.L. c. 121A matters is both conferred and limited by G.L. c. 58, § 1A, the statute under which your request was made explicitly. It is limited to "any question arising under any statute relating to the assessment, classification and collection of taxes" While the narrow question you have asked and I have answered above fits that formula, the broader questions raised by materials submitted to me and discussed in footnote 6 above involve the construction and administration of chapter 121A generally, rather than the specific topic of taxes. Hence they do not fall within the ambit of G.L. c. 58A, § 1A, and I should not answer them.

There is also a third reason why I decline to express any opinion on the broader issues potentially raised by this project. Each of those issues is or may be subject to the explicit oversight of another public agency, namely the Boston

^{7/} However, as noted above, in performing those duties you are authorized to exercise all of your authority under G.L. c. 62C. See G.L. c. 121A, § 10, ¶ 5.

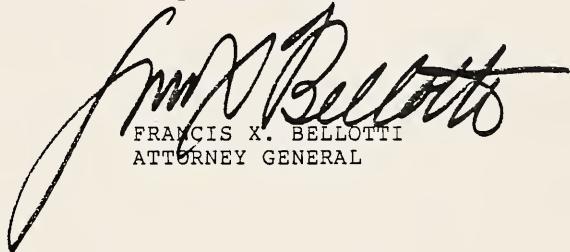
Ira A. Jackson
Commissioner of Revenue
November 6, 1985
Page 10

Redevelopment Authority, which St. 1960, c. 652, §§ 12-14, designates as the regulatory authority for chapter 121A projects in the City of Boston. See Bronstein v. Prudential Insurance Company, 390 Mass. 701, 705 (1984). Since the Authority has not yet finally approved the project, my opinion would seem both premature and perhaps unnecessary. Cf. 1984/85 Op. Atty. Gen. No. 5, Rep. A.G., Pub. Doc. No. 12 at ____ (1984); 1984/85 Op. Atty. Gen. No. 8, Rep. A.G., Pub. Doc. No. 12 at ____ (1985). Furthermore, it is certainly possible and perhaps quite likely, in view of the material I have received strenuously opposing the project, that litigation will be commenced which will raise some or all of the broad issues mentioned above. In such circumstances no opinion of this office would resolve the matter and so, as has been my consistent practice and that of my predecessors, none should be given. 1975/76 Op. Atty. Gen. No. 37, Rep. A.G., Pub. Doc. No. 12 at 121 (1976); see also G.L. c. 58, § 1A, ¶ 5 (Attorney General's opinion, when given, is to be "binding"). Significant legal questions such as those mentioned above may be resolved through litigation, and where, as provided by St. 1960, c. 652, §§ 13-14, any private person aggrieved has

Ira A. Jackson
Commissioner of Revenue
November 6, 1985
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standing to seek judicial review,^{8/} the courts are the only forum that can provide a definitive resolution that will be binding upon all interested parties, both private and public.

Very truly yours,



FRANCIS X. BELLOTTI
ATTORNEY GENERAL

8/ See, e.g., Boston Edison Company v. Boston Redevelopment Authority, 374 Mass. 37, 43 (1977).

IRA A JACKSON
COMMISSIONER

The Commonwealth of Massachusetts

Department of Revenue

Leverett Saltonstall Building

100 Cambridge Street, Boston 02201

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ASSESSOR'S OFFICE

November 25, 1985

William Coughlin, Commissioner
Assessing Department
Boston City Hall
Boston, Massachusetts 02201

Dear Commissioner Coughlin:

On April 30, 1985, you asked my opinion on a matter relating to excise treatment given a development project proposed pursuant to G.L. c. 121A. You asked whether it is permissible for the computation of the gross income portion of the excise to be based on the gross income of a 121A corporation rather than on the gross income of the entire 121A project, where the development of the project is transferred by the 121A corporation to a non-121A entity.

The question posed by you raised important legal issues of first impression and possibly wide-ranging importance. In accordance with the provisions of G.L. c. 58, § 1A, I forwarded your question to the Attorney General for his opinion. I also raised several concerns which I had about the legal propriety of the proposed development scheme. The Attorney General has responded to your question in a narrow and direct fashion, seeing fit to leave my stated concerns unanswered.

I hereby transmit the Attorney General's opinion to you for whatever guidance you may derive from it.

Very truly yours,

Ira A. Jackson



APPENDIX E

Difference Between Gross Income
Component of Section Ten Excise Using
Corporation Income Versus Using Project Income

	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
<u>Year</u>	<u>Project Income</u>	<u>5% Project Income</u>	<u>Corporate Income</u>	<u>5% Corporate Income</u>	<u>Income Difference</u>
1	3,646,200	182,310	265,000	13,250	169,060
2	6,036,165	301,808	568,964	26,448	275,360
3	6,420,720	321,036	855,294	42,764	278,272
4	6,805,275	340,263	1,181,625	59,081	281,182
5	7,189,830	359,491	1,507,955	75,397	284,094
6	7,574,385	378,919	1,834,285	91,714	287,205
7	7,958,940	397,947	2,160,616	108,030	289,917
8	8,343,495	417,174	2,486,946	124,347	292,827
9	8,728,050	436,402	2,813,274	140,663	295,739
10	9,112,605	455,630	3,139,607	156,980	298,650
11	9,497,160	455,630	3,139,607	173,296	301,562
		4,065,838		1,100,970	3,053,868

EXHIBIT VI-F

APPENDIX F

Comparison of Taxes Under
Chapter 59 With Section Ten Using
Both Corporate and Project Income

<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>
<u>YEAR</u>	<u>Section 10 Taxes using Corporate Income</u>	<u>Savings Over c. 59 (\$1,290,000 Less column 1)</u>	<u>Section 10 Taxes using Project Income</u>
1	443,250	846,750	662,310
2	456,448	833,552	781,808
3	472,764	817,236	801,036
4	489,081	800,919	820,263
5	505,397	784,603	839,491
6	521,714	768,286	858,919
7	538,030	751,970	877,947
8	554,347	735,653	897,174
9	570,663	719,337	916,402
10	586,980	703,020	935,630
11	603,296	<u>686,704</u>	<u>954,858</u>
		8,448,030	<u>335,142</u>
			4,844,162

*Estimate based on Cost of \$43,000,000 and tax rate of \$30 per \$1,000 valuation, resulting in a tax of \$1,290,000.

VII. MISCELLANEOUS LEGAL ARGUMENTS

First Franklin believes that other errors of law and findings without the support of substantial evidence have occurred by the allowance of the application and, if the amendments are allowed, will have occurred by that act. In order to present these views to the Board and preserve the opportunity for a judicial review of these points, this memorandum will set forth additional arguments, without waiving arguments previously raised concerning the application.

1. The creation of a partnership to operate the parking garage violates Chapter 121A, Section 8, as applicable to Boston by St. 1960, Chapter 652, Section 12. That section states in part:

"Every such corporation shall be deemed to have been organized to serve a public service, and shall remain at all times subject to all reasonable rules and regulations applicable to its project. All real estate acquired by any such corporation and all structures erected by it shall be deemed to be acquired or erected for the purpose of promoting the public health, safety and welfare and shall be subject to the provisions of this Chapter. (Emphasis supplied)".

The operation of the garage by a limited partnership does not comply with this provision of law. In fact, the partnership will be completely unregulated, a fact that the applicants admit in their original application at page 11.

2. The entire proposal of the Friends of Post Office Square also violates Chapter 121A, Section 8. Not only is the entity which operates and collects the revenue from the major

component of this project completely unregulated, but all of the decision making authority concerning the financing, design, the program and other fundamental elements of the project itself are delegated to employees of the Boston Redevelopment Authority ("BRA") or the Mayor's office. Taken together, the plan is a conscious and unprecedented attempt to vitiate the statutory requirement that the project remain subject to oversight.

3. The construction of the project by the partnership violates Chapter 121A, Section 8. A reading of the above-cited section indicates that real estate is to be acquired by the corporation and "all structures erected by it." "It" is the corporation. The applicants have attempted to save themselves millions of dollars in tax money by playing with this same phrasiology as employed in Section 10. The applicants vehemently assert that "it" in Section 10 means the corporation. "Its" income is the tax figure. When we look at Section 8, however, "it" apparently means the partnership, although the language is virtually identical.

In the same light, Chapter 121A, Section 3, requires that the project be undertaken and carried out by the corporation. See, too, St. 1960, Chapter 652, Section 13. Nowhere in the statutory scheme is the right to undertake construction of the project permitted to be delegated to another entity.

4. The BRA's authorization for the taking and development of the Post Office Square Garage violates St. 1982, c.190, Section 24 which amended St. 1909, c.486 by adding section 31D, and the delegation of authority by the Public Facilities Commission pursuant to St. 1966, Chapter 642, Section 3(f)(ii). The power to dispose of municipal garages is vested exclusively in the Public Facilities Commission after those garages have been transferred to that body by the City Counsel. The Public Facilities Commission has designated five city-owned garages for redevelopment. The Post Office Square Garage is not one of them. By authorizing the applicants to seize and redevelop this property, the BRA has overstepped its authority in direct conflict with St. 1982, c. 190, Section 24 and the vote of the Public Facilities Commission.

5. This Board cannot find as a matter of law that this property or project area is decadent or for any other reason subject to Chapter 121A. Chapter 121A, Section 2, in declaring the public necessity for the Urban Redevelopment statutory scheme, made the express determination that the property to which the scheme was applicable must be ". . . beyond remedy and control solely by regulatory processes in the exercise of the police power and cannot be dealt with effectively by the ordinary operations of private enterprise without the aids herein provided." This requirement of the legislature was adopted by the BRA which requires as part of any application that evidence be provided indicating ". . . why it is

improbable that the project would be developed by the ordinary operations of private enterprises . . ." Regulations, Rule 2(C)(4)(d)

6a. The first element of this requirement is that the "menace" is beyond the remedy and control of regulatory process. Clearly, this finding cannot be made concerning the existing garage. In the first place, the property is owned by the City of Boston. By covenant, the lessee is obligated to remedy any deficiencies upon the request of the appropriate city agency. Secondly, there is an entire panoply of health codes, zoning codes, building codes and fire codes to which this garage is subject. The lessee of the garage remains obligated by law and by the lease to correct any deficiencies. Evidence presented elsewhere indicates extraordinary sums of money have been expended to that end. Therefore, there is no evidence whatsoever that any deficiencies in the garage cannot be remedied through the traditional regulatory process.

6b. A second requirement before the extraordinary powers of redevelopment can be exercised is a finding that any problem cannot be dealt with effectively by private enterprise. Considering the lust which the applicants display for this parcel and the tenacious resolve of the lessee to retain it, it is clear that private enterprise is only too happy to deal with this property. As the record indicates, prior to the bringing of this application, offers were made to purchase First Franklin's lease. Other offers to privately redevelop the

parcel have been made to First Franklin. Far from beyond the operations of private enterprise, this parcel is a plum and the resort by a rejected suitor to the extraordinary powers of this Board makes a mockery of the theory behind urban redevelopment.

7. As has been explained elsewhere, no project can be approved until the BRA finds that its execution is practicable. St. 1960, Chapter 652, Section 13. The subject property is located in a district which is subject to a parking freeze. No new or expanded parking may be built without a permit. There is a distinctly defined number of allowed spaces in the City of Boston's freeze region and no more than this number of spaces may exist.

The Applicants have no permit to build parking spaces nor have they applied for one. It is conceivable that at the time an application is made, there will be no spaces available. If so, the garage cannot be built.

Under these circumstances, it is an error of law to find that the proposed project is practicable.

8. Another required finding under St. 1960, Chapter 652, Section 13, is that the proposed project does not conflict with the Master Plan. The Applicants put forth information that the 1965-1975 Master Plan created in 1964 anticipated that Post Office Square would be a commercial area. We respectfully submit that this Plan, now 20 years old, can no longer be considered the Master Plan to which the statute refers if, in fact, it ever was. There is no formal Master Plan and, in

fact, such a plan must be considered to be the entire collection of City plans and approvals made concerning the area.

Reviewing each of the outstanding programs and plans, three conclusions are evident:

- a. The City committed this parcel to low-cost parking for 40 years;
- b. The parking freeze and the requirement that air quality standards be improved indicates a strong policy against additional parking and against enticing the automobile into the center city; and
- c. To the extent new parking is contemplated, all plans proposed to date suggest moving parking from the center city to the junctures with the major transportation arteries. In fact the proposal will use up spaces in the parking "freeze bank" so that these needed outlying lots face further obstacles.

Therefore, this proposal is contrary to the "master plan" and contrary to the most recent and detailed expressions of the City's plans for future transportation and parking needs.

9. The payment of monies which, by law, should be paid as excise taxes to a trust is illegal. Funds for public parks, like all municipal spending, is to be determined by elected officials who appropriate the money. The applicants not only target funds with no municipal appropriation, but funnel a portion of their tax obligations into a trust.

10. The retention by the Applicants of the right to regulate vendors and performers at the project site is inconsistent with the City Licensing Board's authority over these matters and indicates that the park is intended to be for

private aggrandizement and not a public purpose. The Applicants retain all of the incidents of ownership of the property including the fee, the right to income, the right to development and the right to control access. These are all incidents of private control and inconsistent with the requirement that eminent domain be used for a public purpose.

11. Property over which the power of eminent domain has been exercised, in order to condemn property for a public purpose, can not be transferred or diverted to another public use, Sacco v. Dep't of Public Works, 352 Mass. 670, 672 (1967).

12. The purported approval of the Mayor was in fact conditional (see Appendix "VII-A" attached hereto, and T. V. III at 22,) and did not constitute "approval" as required by St. 1960 c. 652,§13.

Respectfully submitted,

FIRST FRANKLIN PARKING CORP.

By its attorneys,

Walter H. McLaughlin, Sr.
Walter H. McLaughlin, Sr.
Walter H. McLaughlin, Jr.
Robert E. McLaughlin
David L. Klebanoff
Gilman, McLaughlin & Hanrahan
470 Atlantic Avenue
Boston, Massachusetts 02210
(617) 482-1900

EXHIBIT VII-A



CITY OF BOSTON • MASSACHUSETTS

OFFICE OF THE MAYOR
RAYMOND L. FLYNN

October 4, 1984

RECEIVED
CITY OF BOSTON'S OFFICE
1986 JAN 17 P 4 25
BOSTON, MASS.

Stephen Coyle, Director
Boston Redevelopment Authority
City Hall
Boston, MA 02201

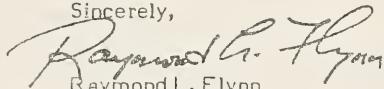
Dear Mr. Coyle:

In accordance with Chapter 121A of the Massachusetts General Laws, as amended by Chapter 652 of the Acts of 1960, I have approved the Boston Redevelopment Authority's (the "Authority") approval of the Subsidiaries of Friends of Post Office Square, Inc. project (the "Project") and the formation of an urban redevelopment corporation under the name of Post Office Square Redevelopment Corporation.

My staff has informed me that various matters remain to be discussed and agreed to between the Friends of Post Office Square and the City. As soon as these outstanding matters are resolved, I will transmit to the Secretary of the Authority the necessary documents to be filed with the City Clerk.

I hereby request that the Authority, in conjunction with John Connolly of my staff, negotiate and finalize agreements resolving these issues within 30 days.

Sincerely,


Raymond L. Flynn
Mayor

CERTIFICATE OF VOTE

The undersigned hereby certifies as follows:

(1) That he is the duly qualified and acting Secretary of the Boston Redevelopment Authority, hereinafter called the Authority, and the keeper of the records, including the journal of proceedings of the Authority.

(2) That the following is a true and correct copy of a vote as finally adopted at a meeting of the Authority held on May 10, 1984 and duly recorded in this office:

Copies of a memorandum dated May 10, 1984 were distributed re Chapter 121A Application of Post Office Square Redevelopment Corporation, attached to which were copies of a sixteen page document entitled, "BOSTON REDEVELOPMENT AUTHORITY REPORT AND DECISION ON THE APPLICATION OF SUBSIDIARIES OF FRIENDS OF POST OFFICE SQUARE, INC. FOR THE AUTHORIZATION AND APPROVAL OF A PROJECT UNDER MASSACHUSETTS GENERAL LAWS CHAPTER 121A, AS AMENDED, AND CHAPTER 652 OF THE ACTS OF 1960, AND FOR CONSENT TO THE FORMATION PURSUANT TO CHAPTER 121A OF AN URBAN REDEVELOPMENT CORPORATION UNDER THE NAME POST OFFICE SQUARE REDEVELOPMENT CORPORATION FOR THE PURPOSE OF UNDERTAKING AND CARRYING OUT THE PROJECT" and a proposed vote.

Councilor Joseph Tierney addressed the Authority and asked that this matter be taken under advisement at this time.

Mr. Flaherty moved to take the matter under advisement. Mr. Walsh seconded the motion.

The motion failed.

Messrs. Farrell, Jones and McDermott voted "Nay".

On motion duly made and seconded, it was

VOTED: That the document presented at this meeting entitled, "BOSTON REDEVELOPMENT AUTHORITY REPORT AND DECISION ON THE APPLICATION OF SUBSIDIARIES AND FRIENDS OF POST OFFICE SQUARE, INC., FOR THE AUTHORIZATION AND APPROVAL OF A PROJECT UNDER MASSACHUSETTS GENERAL LAWS CHAPTER 121A, AS AMENDED, AND CHAPTER 652 OF THE ACTS OF 1960, AND FOR CONSENT TO THE FORMATION PURSUANT TO SAID CHAPTER 121A OF AN URBAN REDEVELOPMENT CORPORATION UNDER THE NAME POST OFFICE SQUARE REDEVELOPMENT CORPORATION FOR THE PURPOSE OF UNDERTAKING AND CARRYING OUT OF THE PROJECT" be and is hereby approved and adopted.

Mr. Flaherty voted "Nay".

The aforementioned sixteen page document entitled "BOSTON REDEVELOPMENT AUTHORITY REPORT AND DECISION ON THE APPLICATION OF SUBSIDIARIES OF FRIENDS OF POST OFFICE SQUARE, INC., FOR THE AUTHORIZATION AND APPROVAL OF A PROJECT UNDER MASSACHUSETTS GENERAL LAWS CHAPTER 121A, AS AMENDED, AND CHAPTER 652 OF THE ACTS OF 1960, AND FOR CONSENT TO THE FORMATION PURSUANT TO SAID CHAPTER 121A OF AN URBAN REDEVELOPMENT CORPORATION UNDER THE NAME POST OFFICE SQUARE REDEVELOPMENT CORPORATION FOR THE PURPOSE OF UNDERTAKING AND CARRYING OUT THE PROJECT" is filed in the Document Book of the Authority as Document No. 4439.

(3) That said meeting was duly convened and held in all respects in accordance with law, and to the extent required by law, due and proper notice of such meeting was given; that a legal quorum was present throughout the meeting, and a legally sufficient number of members of the Authority voted in a proper manner and all other requirements and proceedings under law incident to the proper adoption or the passage of said vote have been duly fulfilled, carried out and otherwise observed.

(4) That the document to which this certificate is attached is in substantially the form as that presented to said meeting.

(5) That if an impression of the seal has been affixed below, it constitutes the official seal of the Boston Redevelopment Authority and this certificate is hereby executed under such official seal.

(6) That Robert J. Ryan is the Director of this Authority.

(7) That the undersigned is duly authorized to execute this certificate.

IN WITNESS WHEREOF the undersigned has hereunto set his hand this fourteenth day of May 1984.

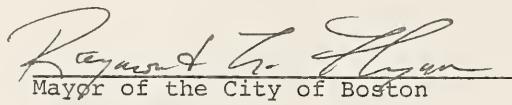
BOSTON REDEVELOPMENT AUTHORITY

By Karen Juranian
Secretary



APPROVED:

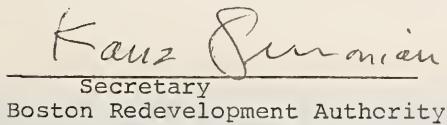
Including, without limiting the generality of the foregoing, the "Boston Redevelopment Authority Report and Decision on the Application of Subsidiaries of Friends of Post Office Square, Inc., for the Authorization and Approval of a Project under Massachusetts General Laws Chapter 121A, as amended, and Chapter 652 of the Acts of 1960, and for Consent to the Formation Pursuant to said Chapter 121A of an Urban Redevelopment Corporation under the Name Post Office Square Redevelopment Corporation for the Purpose of Undertaking and Carrying Out of the Project"; the May 10, 1984 vote of the Authority approving said Report and Decision; the rules and regulations for the Project contained in said Report and Decision; and the permissions contained in said Report and Decision for the Project to deviate from Zoning Code regulations in effect for the City of Boston.


Raymond T. Flynn
Mayor of the City of Boston

October 4, 1984
Date

Attest:


Webb Miller
City Clerk 10/4/84


Kauz Burman
Secretary
Boston Redevelopment Authority

7797 55

